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MAR 23 2012
OFFICE OF PETITIONS

In re Patent No. 7,665,117 Issue Date: February 16, 2010 Application No. 09/725,792

Filed: November 29, 2000

Attorney Docket No. 057866-134132

: DECISION GRANTING PETITION : UNDER 37 CFR 1.78(a)(3) AND : REQUEST FOR CERTIFICATE OF

: CORRECTION

This is a decision on the petition, filed February 29, 2012, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 09/137,618, filed August 21, 1998, by way of a certificate of correction.

## The petition is **dismissed**.

A review of the file record fails to disclose that a claim for the benefit of priority to the abovenoted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed November 29, 2000. Therefore, since this application was filed on or after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See, MPEP 1481.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the priorfiled application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant petition fails to satisfy requirement (1) set forth above. The reference as submitted on the draft certificate of correction incorrectly asserts that the instant application ('792) is a division of U.S. App. No. 09/137,618 filed August 21, 1998 which issued as Patent. No.

Patent No. 7,665,117

6,222,530 on April 4, 2001. A review of the record reveals that App. No. 09/137,618 matured into U.S. Pat. No. 6,222,530 on April 24, 2001.

Any request for reconsideration must be accompanied by the proper reference.

Receipt is acknowledged of the required surcharge. As petitioners have not submitted the certificate of correction fee of \$100.00, the required certificate of correction fee will be charged to the authorized deposit account upon submission of a grantable petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Attn: Ivar M. Kaardal Kaardal & Associates, pc 3500 South First Ave. Circle - Suite 250 Sioux Falls SD 57105-5802

MAILED

DEC 03 2010

In re Patent No. 6,502,951

Issue Date: January 7, 2003

Application No. 09/727,419 Filed: December 1, 2000

Attorney Docket No. 99 - 1930

OFFICE OF PETITIONS

DECISION ON PETITION UNDER 37 CFR 1.378(b)

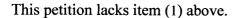
This is a decision on the petition under 37 CFR 1.378(b), filed August 23, 2010 (certificate of mailing date August 17, 2010), to accept two unavoidably delayed payments of maintenance fees for the above-identified patent.

## The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by a petition fee of \$350.00. The fee is \$400.00 as set forth in 37 CFR 1.17(f). However, patentee has overpaid by \$50.00 (the surcharge after expiration is \$700.00, not \$750.00. Therefore, petitioner should submit only \$350.00 if reconsideration is desired. The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued January 7, 2003. The first maintenance fee could have been paid from January 7, 2006 through July 7, 2006, or with a surcharge during the period from July 8, 2006 through January 7, 2007. Accordingly, the patent expired at midnight on January 8, 2007, for failure to timely submit the first maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).



The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

Petitioner states that the delay in payment of the first maintenance fee was unavoidable due to financial difficulties and a state of distress at the time in question. Petitioner states that her handbag was stolen in 2001 with her social security card inside. She was the subject of identity theft. Petitioner states this crime put her into a state of distress. On some unspecified date, she filed bankruptcy. Petitioner appears to be arguing financial troubles and emotional distress caused her to fail to make two maintenance fee payments.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses the identical language, i.e. "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting <u>In re Patent No. 4,409,763</u>, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)). Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, petitioner must show that she was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due to her financial situation or physical condition until the petition was filed.

In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were emplaced by petitioner or anyone else. In the absence of a showing that petitioner or anyone else was engaged in tracking the

maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra. Put otherwise, the issues of petitioner's financial problems and emotional state are immaterial in the absence of a showing that there were steps in place to pay the fee.

A showing of unavoidable delay based upon financial condition must establish that the financial condition of the petitioner during the entire period of the delay was such as to excuse the delay. See Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). The showing of record does not adequately establish that petitioner's entire delay in paying the first and second maintenance fees from January 7, 2007, until the petition was filed on August 17, 2010, was unavoidable within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).

A complete showing, with supporting documentation, is required of the financial condition of petitioner or the party responsible for payment of the maintenance fees. Such showing should include all income, expenses, assets, credit, and obligations, which made the delay in payment of the maintenance fees from January 7, 2007, until the filing of the petition on August 17, 2010, "unavoidable." A monthly breakdown is preferred.

In essence, petitioner must show that she was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fees came due, was financially unable to make the payment until the petition was filed. The showing should include documentary proof of the maintenance fee tracking system, the entry of this patent in that system and an explanation of how the system worked.

A showing of unavoidable delay based upon physical/emotional issues must establish that the physical/mental condition of the petitioner during the entire period of the delay was such as to excuse the delay.

If petitioner persists in arguing physical incapacitation as the cause of the delay, petitioner will have to provide documents from licensed health care providers, demonstrating the nature and extent of petitioner's incapacitation, in such a manner that petitioner was, until the filing of the petition on August 17, 2010, prevented from taking any earlier action with respect to this patent.

Additionally, petitioner must state how she managed to conduct her daily personal and business affairs, including scheduling and settlement of short and long term debts and business obligations, bills, rent or mortgage payments, income taxes etc., during the time in question. Did petitioner fail to make other payments due during the time in question? Please be specific in response. Petitioner must demonstrate that her health problems were such as to cause the payment of the maintenance fee to have been unavoidably delayed.

Preoccupation with other matters which took precedence over maintenance of the above-identified patent does not constitute unavoidable delay. See <u>Smith v. Mossinghoff</u>, 671 F.2d 533, 538 213 USPQ 977, 982 (D.C. Cir. 1982).

If petitioner does not wish to further pursue reinstatement of the above-identified application, petitioner should file a copy of this decision along with a request for refund of the \$2480.00 submitted with the present petition.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. The address listed on the petition is different from the address of record. If petitioner wishes to change her correspondence address please complete and return the enclosed form: CHANGE OF CORRESPONDENCE ADDRESS PATENT (form PTO/SB/123).

A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

If patentee wishes to receive any future mailed maintenance fee reminder, a "FEE ADDRESS" INDICATION FORM (form PTO/SB/47) and a Request for Customer Number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540.

Further correspondence with respect to this matter should be addressed as follows:

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at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: MARILYN J. MARSHALL

5757 WESTHEIMER RD.

**SUITE 3-91** 

HOUSTON, TX 77057

Enclosures: Blank form: CHANGE OF CORRESPONDENCE ADDRESS PATENT (form

PTO/SB/123)

Blank form: FEE ADDRESS" INDICATION FORM (form PTO/SB/47)

Blank form: Request for Customer Number (form PTO/SB/125)

**Privacy Act Statement** 

PTO/SB/123 (11-08)

Approved for use through 11/30/2011. OMB 0651-0035 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Patent Number **CHANGE OF** Issue Date **CORRESPONDENCE ADDRESS** Patent Application Number Filing Date Address to: Mail Stop Post Issue First Named Inventor Commissioner for Patents P.O. Box 1450 Attorney Docket Alexandria, VA 22313-1450 Number Please change the Correspondence Address for the above-identified patent to: The address associated with Customer Number: OR Firm or Individual Name **Address** City State ZIP Country **Email** Telephone This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124). This form will not affect any "fee address" provided for the above-identified patent. To change a "fee address" use the "Fee Address Indication Form" (PTO/SB/47). I am the: Patentee. Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96). Attorney or agent of record. Registration Number \_ Signature Typed or **Printed Name** Telephone

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Post Issue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms

if more than one signature is required, see below\*.

forms are submitted.

\*Total of

PTO/SB/47 (03-09)

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# "FEE ADDRESS" INDICATION FORM

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INSTRUCTIONS: The issue fee must have been paid for application(s) listed on this form. In addition, only an address represented by a Customer Number can be established as the fee address for maintenance fee purposes (hereafter, fee address). A fee address should be established when correspondence related to maintenance fees should be mailed to a different address than the correspondence address for the application. When to check the first box below: If you have a Customer Number to represent the fee address. When to check the second box below: If you have no Customer Number representing the desired fee address, in which case a completed Request for Customer Number (PTO/SB/125) must be attached to this form. For more information on Customer Numbers, see the Manual of Patent Examining Procedure (MPEP) § 403.					
For the following listed application(s), pleas 1.363 the address associated with:	se recognize as the	"Fee Address" under the provisions of 37 CFR			
Customer Number:					
OR					
The attached Request for Customer	Number (PTO/SB/	125) form.			
PATENT NUMBER (if known)		APPLICATION NUMBER			
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Completed by (check one):					
Applicant/Inventor		Signature			
Attorney or Agent of record(Reg.	No.)	Typed or printed name			
Assignee of record of the entire interes Statement under 37 CFR 3.73(b) is end (Form PTO/SB/96)		. Requester's telephone number			
Assignee recorded at ReelF	rame	Data			
NOTE: Signatures of all the inventors or assignees of record signature is required, see below*.	of the entire interest or thei	Date r representative(s) are required. Submit multiple forms if more that one			
* Total of forms	are submitted.				

This collection of information is required by 37 CFR 1.363. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alex andria, VA 22313-1450. DO NOT SEND COMPLETE D FORMS TO THIS A DDRESS. SEND TO: Mall Stop M Correspondence, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/125A (11-08)
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To the Commission Please assign a Co	ner for Pater ustomer Nun	nts onber to the Address	indicate	ed below.				
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Request Subn	nitted by:							
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This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop CN, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.** 

### **Privacy Act Statement**

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- A record from this system of records may be disclosed, as a routine use, in the course of
  presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to
  opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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MARILYN J. MARSHALL 5757 WESTHEIMER RD. **SUITE 3-91** HOUSTON, TX 77057

**MAILED** 

FFB 28 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,502,951

Issue Date: January 7, 2003

Application No. 09/727,419 REQUEST FOR INFORMATION

Filed: December 1, 2000

Attorney Docket No. 99 - 1930

A renewed petition under 37 CFR 1.378(b)/37 CFR 1.378(e), was filed on February 4, 2011, to accept the delayed payment of two maintenance fees for the above-identified patent.

Petitioner should submit the requested item within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. No additional petition fee is due for a response to the instant request for information. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

The December 3, 2010 decision on petition stated, in pertinent part:

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by a petition fee of \$350.00. The fee is \$400.00 as set forth in 37 CFR 1.17(f). However, patentee has overpaid by \$50.00 (the surcharge after expiration is \$700.00, not \$750.00. Therefore, petitioner should submit only \$350.00 if reconsideration is desired. ...

Petitioner paid \$300.00. Petitioner owes a \$50.00 balance. Until the full reconsideration fee is paid, the merits of the renewed petition cannot be addressed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.

Shurene Willis Brantley

Senior Petitions Attorney

Office of Petitions





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MARILYN J. MARSHALL 5757 WESTHEIMER RD. #3-91 HOUSTON TX 77057-5749

MAILED
AUG 2 4 2011
OFFICE OF PETITIONS

In re Patent No. 6,502,951

Issue Date: January 7, 2003

Application No. 09/727,419 : DECISION ON PETITION Filed: December 1, 2000 : UNDER 37 CFR 1.378(b)

Attorney Docket No. 99-1930

For: LIGHTED AND CONTENT-

ORGANIZING CARRYING CASE

This is a decision on the reconsideration petition under 37 CFR 1.378(e), filed March 30, 2011 and supplemented on May 31, 2011, to reinstate the above-identified patent.

The petition is **DENIED**.<sup>1</sup>

### Background

The patent issued January 7, 2003. The first maintenance fee could have been paid from January 7, 2006 through July 7, 2006, or with a surcharge during the period from July 8, 2006 through January 7, 2007. Accordingly, the patent expired at midnight on January 8, 2007, for failure to timely submit the first maintenance fee.

A petition under 37 CFR 1.378(b) was filed on August 23, 2010 (certificate of mailing date August 17, 2010). The petition was dismissed in a decision mailed December 3, 2010.

Petitioner filed papers on February 4, 2011. However, the papers were not accompanied by the reconsideration fee. Therefore, the Office mailed a Request for Information on February 28, 2011.

The content of the prior decision on petition, mailed December 3, 2010, is incorporated by reference into the present decision.

<sup>&</sup>lt;sup>1</sup> This decision may be viewed as a final agency action within the meaning of 5 USC § 704 for purposes of seeking judicial review. See MPEP 1002.02. The terms of 37 C.F.R. 1.137(d) do not apply to this decision.

## Applicable Statute and Regulation

## 35 U.S.C. 41(c)(1) states that:

"The Director may accept the payment of any maintenance fee required by subsection (b) of this section which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional, or at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable."

### 37 CFR 1.378(b) states that:

Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

- (1) the required maintenance fee set forth in §1.20 (e)-(g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

### **Opinion**

Petitioner asserts that the delay in payment of the first maintenance fee was unavoidable because petitioner was involved in Chapter 13 bankruptcy proceedings in December of 2005 and Hurricane Katrina destroyed Houston, Texas in August of 2005.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. 133 because 35 U.S.C. 41(c)(1) uses the identical language, i.e., "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat 1898)). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex Parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used by prudent and careful men in relation to their most important business"); In Re Mattullath, 38 App. D.C. 497, 514-515 (D.C.

Cir. 1912); Ex Parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

35 U.S.C. 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133. Consequently, a reasonably prudent person in the exercise of due care and diligence will take steps to ensure the timely payment of maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. Thus, it follows that an adequate showing of unavoidable delay in payment of a maintenance fee, within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3), requires a showing of the steps taken to ensure the timely payment of the maintenance fees for the patent. Id. Where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee.

Petitioner has the burden of proof and must supply the evidence to show that she was unavoidably delayed from paying the first maintenance fee.

35 U.S.C. § 41(c)(1) authorizes the Director to accept a delayed maintenance fee payment "if the delay is shown to the satisfaction of the Director to have been unavoidable." 35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry the burden to establish that the delay was unavoidable. See Commissariat A. L'Energie Atomique v. Watson, 274 F. 2d 594, 597, 124 USPQ 126, 128 (D.C. cir. 1960) (35 U.S.C. §133 does not require the Director to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing); see also In re Application of G, 11 USPQ2d 1378, 1380 (comm'r Pat. 1989) (petition under 37 CFR 1.137(b) denied because the applicant failed to carry the burden of proof to establish that the delay was unintentional).

37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were emplaced by petitioner or anyone else. In the absence of a showing that petitioner or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra.

The showing of record does not adequately establish that petitioner's entire delay in paying the first maintenance fee from January 7, 2007, until the first petition was filed on or about certificate of mailing date August 17, 2010, was unavoidable within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).

Petitioner has not explained how she personally was impacted by Hurricane Katrina, which decimated Houston, Texas in August 2005. The fact that the city was, in petitioner's words, "shut down" does not necessarily mean that petitioner's home or place where she conducts her patent business was damaged to the extent that her system for monitoring and paying maintenance fees was rendered inoperable. It is noted that the first maintenance fee was due on January 7, 2007, and that date is almost 2 ½ years after Hurricane Katrina hit Houston, Texas. Petitioner has not provided documentary proof of her maintenance fee tracking system, the entry of this patent in that system and an explanation of how the system worked.

Similarly, the fact that petitioner was involved in bankruptcy proceedings in December 2005 does not establish that the failure to pay a maintenance fee by January 7, 2007 was unavoidable. A showing of unavoidable delay based upon financial condition must establish that the financial condition of the petitioner during the entire period of the delay was such as to excuse the delay. See Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

Petitioner has not provided a complete showing of her financial condition from January 7, 2007, until the first petition was filed on or about certificate of mailing date August 17, 2010.

In short, petitioner has failed to carry her burden of proof to establish to the satisfaction of the Director that the delay in payment of the first maintenance fee for the above-identified patent was unavoidable within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).

#### Decision

The prior decision which refused to accept under 37 CFR 1.378(b) the delayed payment of a maintenance fee for the above-identified patent has been reconsidered. For the reasons herein and stated in the previous decision, the entire delay in this case cannot be regarded as unavoidable within the meaning of 35 U.S.C. 41(c)(1) and 37 CFR 1.378(b). Therefore, the petition is **denied**.

As stated in 37 CFR 1.378(e), the Office will not further consider or review the matter of the reinstatement of the patent.

In due course, the Office will refund \$2,430.00, which corresponds to the maintenance fees and surcharge paid via a U.S. Treasury check. The reconsideration fee of \$400.00 will be retained.

The patent file is being forwarded to Files Repository.

Telephone inquiries may be directed to Petitions Attorney Shirene Willis Brantley at (571) 272-

3230.

Anthory Knight Director

Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THOMAS CANTY 6100 DONNER ROAD LOCKPORT NY 14094 MAILED FEB 25 2011

OFFICE OF PETITIONS

In re Patent No. 6,450,655

Issue Date: September 17, 2002

Application No. 09/727,649 Filed: December 1, 2000

For: Multi-Port Illuminating and Viewing

Unit

REQUEST FOR INFORMATION

This is a decision on the petition under 37 CFR 1.137(a), filed December 6, 2010, to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent. This petition is properly treated under 37 CFR 1.378(b).

## The petition is **DISMISSED**.

The patent issued September 17, 2002. The 7.5 year (second) maintenance fee could have been paid from September 17, 2009 through March 16, 2010 or with a surcharge during the period from March 17, 2010 through September 17, 2010. Accordingly, the patent expired on September 18, 2010, for failure to timely submit the 7.5 year maintenance fee.

Any petition under 37 CFR 1.378 must be signed by an attorney or agent registered to practice before the U.S. Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of 37 CFR 1.378. If the petition is signed by a person not registered to practice before the Office, the petition must indicate that the person signing the petition is the patentee, assignee, or other party in interest. An assignee must comply with the requirements of 37 CFR 3.73(b) which is discussed in MPEP § 324.

The person who has executed the petition is Thomas M. Canty has failed to establish he is authorized to act on behalf of the assignee pursuant to 37 CFR 3.73 (b)(2). A statement pursuant to 37 CFR 3.73(b) is required.

The merits of petitioner's argument to establish unavoidable delay have **not** been considered.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By Hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-3215.

Charlema Grant

**Petitions Attorney** 

Office of Petitions

Enclosure: PTO/SB/96

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6672326	2004-01-06	09727766	2000-12-04	CAP2-PT042 (PBE2499-US)	
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
l	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)		
NOT Small Entity			Small Entity		
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)	
	(1552)		7 ½ year	(2552)	
7 ½ year 11 ½ year			11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES	
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
An attorney     A sole pater	or agent registered to	oractice before the	Patent and Tradem	ark Office	
		authorized to sign	this submission on b	ehalf of all the other patentees.	
A joint pater	ntee; all of whom are si	gning this e-petition	on		
The assigne	ee of record of the entir	e interest			

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/Robert J. Ballarini/	Date (YYYY-MM-DD)	2012-03-05				
Name	Robert J. Ballarini	Registration Number	48684				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



### UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6672326

Issue Date:

January 6,2004

Application No. 09727766

Filed:

December 4,2000

Attorney Docket No. Q-62043

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

March 5,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 5,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

PATTERSON & SHERIDAN, LLP -- APPM/TX 3040 POST OAK BOULEVARD, SUITE 1500 HOUSTON TX 77056

MAILED

SEP 2 4 2010

OFFICE OF PETITIONS

In re Application of

Chen, et al.

Application No. 09/728,038

**DECISION ON PETITION** 

Filed:

December 1, 2000

Attorney Docket No. AMAT/3778/CMP/CMP/RKK

This is a decision on the petition under 37 CFR 1.137(b), filed September 2, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 7, 2009, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on October 8, 2009. A Notice of Abandonment was mailed January 21, 2010.

The amendment filed September 2, 2010, is noted.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the délay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application<sup>1</sup>. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

The application is being forwarded to Technology Center 3700, GAU 3723 for further processing

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

cc:

Keith Taboada 595 Shrewsbury Ave. Suite 100 Shrewsbury, NJ 07702

<sup>&</sup>lt;sup>1</sup> The power of attorney filed September 2, 2010, is noted but cannot be entered as the power of attorney is executed by assignee and the 3.73(b) statement filed September 2, 2010, is defective. The 3.73(b) statement lists that title of the invention as something other than what is recorded in USPTO records.

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6478277	2002-11-12	09728902	2000-12-04	A11-49-US			
	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.			
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee → 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
11 ½ year			11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."			
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
An attorney or agent registered to practice before the Patent and Trademark Office							
A sole patentee							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; all of whom are signing this e-petition							
The assigne	e of record of the entir	e interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/Gary Schnittgrund/	Date (YYYY-MM-DD)	2011-06-18				
Name	Gary Schnittgrund	Registration Number	42130				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6478277

Issue Date: November 12,2002

Application No. 09728902 :DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Filed: December 4,2000

Attorney Docket No.

This is a decision on the electronic petition, filed June 18,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



### UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6862272

Issue Date:

March 1,2005

Application No. 09729886

Filed:

December 4,2000

Attorney Docket No. P124US1

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

October 1,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

October 1,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PEIIIONIC	ACCEPT UNIN		ATENT (37 CFI	R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6862272	2005-03-01	09729886	2000-12-04	P124US1
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
	ims, or has previously	claimed, small ent	tity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
● 3½ year ○ 7½ year	(1551) (1552)		7 ½ year	(2552)
11 ½ year	, ,		11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	L 558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		his petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN I	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE	DELAYED PAYME	ENT OF THE MAINTI	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	TORY OR SIGNATOR	RIES
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am		
An attorney	or agent registered to	practice before the	e Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are s	gning this e-petition	on	
The assigne	ee of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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	Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-29				
Name	Kendal M. Sheets	Registration Number	47077				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



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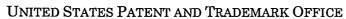
APPLICATION NO.	FILING DATE		FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,984	12/05/	2000	Yisroel Lefkowitz	600474-003	8696
61834 Ostrow Kaufn	7590	05/26/2011		EXAM	INER
Susan Formic	ola			ALVAREZ	, RAQUEL
555 Fifth Ave 19th Floor	nue	•		ART UNIT	PAPER NUMBER
NEW YORK,	NY 10017			3682	
				NOTIFICATION DATE	DELIVERY MODE
				05/26/2011	ELECTRONIC

# Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sformicola@okfllp.com dwalcott@okfllp.com





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAY 2 5 2011.

Ostrow Kaufman LLP Susan Foricola 555Fifth Avenue 19<sup>th</sup> Floor New York, NY 10017

In re application of

Yisroel Lefkowitz

Application No. 09/729,984

Filed: December 5, 2000

For:

METHOD AND APPARATUS FOR SELLING

INTERNATIONAL TRAVEL TICKETS IN COMBINATION WITH DUTY FREE GOODS **DECISION ON PETITION** TO MAKE SPECIAL (ACCELERATED **EXAMINATION**)

This is in response to the petition filed on January 29, 2001, and supplemented on January 30, 2001, to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII. The lengthy delay in treating this petition is sincerely regretted.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a preexamination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references in accordance with 37 CFR 1.111 (b) and (c).

The petition fails to adequately meet requirement (B), (C) and (D) above. In regard to item (B), it is not met because the petition fails to include an election without traverse, or a statement that applicant is willing to elect without traverse should a restriction or election be required. In regard to item (C), although a statement that a preexamination search was made, it is not clear what the field of search was. A proper listing of a field of search would include the classes and subclasses searched for a classification search, the search logic for a text search of U.S. and foreign patents, and the search logic and databases searched for a Non-patent Literature search. In regard to item (D), a copy of each of the references deemed most closely related does not seem to have been submitted. Also, there does not appear to be an IDS listing these references.

For the above stated reasons, the petition is **DISMISSED**.

Petitioner is given one more opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Steven N. Meyers

Special Programs Examiner Technology Center 3600

(571) 272-6611

SNM/snm: 5/25/11

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		LY DELAYED P ATENT (37 CFI	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6496514	2002-12-17	09730149	2000-12-04	491442008700
of the actual U.S. a 1.366(c) and (d).				ritify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN	NTITY STATUS nall entity status.	See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
● 7½ year	(1552)		○ 7½ year	(2552)
11 ½ year	r (1553)		○ 11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	1 558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES
	states: "Any petition unofice, or by the patentee			attorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am		
An attorney	or agent registered to	practice before the	e Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are s	igning this e-petitio	on	
The assigne	ee of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner		
A signature of form of the sig	f the applicant or representative is required in accordance with 37 CFR 1.33 a gnature	nd 10.18. Please see 37 CFR	R 1.4(d) for the
Signature	/Peng Li/	Date (YYYY-MM-DD)	2011-02-16
Name	Peng Li	Registration Number	L0060

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6496514

Issue Date:

December 17,2002

Application No. 09730149

Filed:

This is a decision on the electronic petition, filed

December 4,2000

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Attorney Docket No. 07316/078001

to accept the unintentionally delayed payment of the

February 16,2011

7.5

,under 37 CFR 1.378(c)

year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 16,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PERKINS COIE LLP P.O. BOX 1208 SEATTLE WA 98111-1208

## MAILED

OCT 03 2011

## OFFICE OF PETITIONS

In re Patent No. 7,155,744

Daniel Schreiber and

Andrew Goldman

Issue Date: December 26, 2006

Application No. 09/730,326

Filed: December 4, 2000

Title: COPYRIGHT PROTECTION OF

DIGITAL IMAGES TRANSMITTED OVER

NETWORKS

DECISION DISMISSING PETITION

: UNDER 37 CFR 1.55(c)

: and

: ON REQUEST FOR CERTIFICATE

: OF CORRECTION

:

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 37 C.F.R. 1.55(c) AND REQUEST FOR CERTIFICATE OF CORRECTION, filed August 25, 2011, to add benefit claims to Israeli Patent Application Nos. 124895 filed June 14, 1998, 127093 filed November 16, 1998 and 127869 filed December 30, 1998, by way of issuance of a certificate of correction.

As stated in MPEP 201.16,

A certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 may be requested and issued in order to perfect a claim for foreign priority benefit in a patented continuing application if the requirements of 35 U.S.C. 119(a)-(d) or (f) had been satisfied in the parent application prior to issuance of the patent and the requirements of 37 CFR 1.55(a) are met. Furthermore, if the continuing application (other than a design application), which issued as a patent, was filed on or after November 29, 2000, in addition to the filing of a certificate of correction request, patentee must also file a petition for

an unintentionally delayed foreign priority claim under 37 CFR  $1.55(c)^{1}$ .

Patentee states that with respect to IL 127093 and 127869 the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/397,331 (now U.S. Patent No. 6,298,446) prior to issuance of the patent. Patentee states that with respect to IL 124895 the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/313,067 (now U.S. Patent No. 6,209,103) prior to issuance of the patent. This application is a continuing application of the '331 and '067 applications. A review of the '103 patent confirms that it issued on March 27, 2001 with the foreign priority benefit thereon. By certificate of correction signed September 27, 2011, the '446 patent was corrected to include the foreign priority benefit thereon to all three Israeli applications.

Accompanying the petition to accept the delayed claim of priority is a certificate of correction setting forth the requested foreign priority claim and payment of the certificate of correction processing fee.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require

<sup>&</sup>lt;sup>1</sup> However, a claim to foreign priority benefits cannot be perfected via a certificate of correction if the requirements of 35 U.S.C. 119(a)-(d) or (f) had not been satisfied in the patented application, or its parent, prior to issuance and the requirements of 37 CFR 1.55(a) are not met. In this latter circumstance, the claim to foreign priority benefits can be perfected only by way of a reissue application in accordance with the rationale set forth in Brenner v. State of Israel, 158 USPQ 584.

additional information where there is a question whether the delay was unintentional); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application filed December 4, 2000, was filed after November 29, 2000. The petition includes a claim for priority to foreign application/patent No. IL 124895, filed June 14, 1998; 127093 filed November 16, 1998; and 127869 filed December 30, 1998. Moreover, the petition includes payment of the surcharge and a proper statement of unintentional delay. Intermediate application No. 09/313,067 filed May 17, 1999 was filed within 12 months of the filing date of all 3 foreign applications.

However, requirement (2) above is not met. Israeli application Nos. 127093 and 127869 are referred to in the declaration submitted on filing; however, no box is present or checked to claim priority. With respect to Israeli application No. 124895, the claim is not included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6)).

In view thereof, the petition under 37 CFR 1.55(c) is **DISMISSED**.

Any renewed petition must satisfy requirement (2) above.

The correspondence address of record remains with Perkins & Coie. A courtesy copy of the decision is being mailed to the address on the petition. All future correspondence will be sent to the address of record until such time as a proper change of correspondence address is filed.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

cc: Dawn-Marie Bey
King & Spaulding
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Stolowitz Ford Cowger LLP / ptomail 621 SW Morrison Street Suite 600 Portland OR 97205

MAILED MAR 26 2012 OFFICE OF PETITIONS

In re Patent No. 7,155,744

Daniel Schreiber and

Andrew Goldman

Issue Date: December 26, 2006

Application No. 09/730,326

Filed: December 4, 2000

Title: COPYRIGHT PROTECTION OF : OF CORRECTION

DIGITAL IMAGES TRANSMITTED OVER

NETWORKS

: DECISION GRANTING PETITION

: UNDER 37 CFR 1.55(c)

: and

: ON REQUEST FOR CERTIFICATE

This is a decision on the REQUEST FOR RECONSIDERATION OF THE DECISION TO DISMISS THE PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 37 C.F.R. 1.55(c) AND REQUEST FOR CERTIFICATE OF CORRECTION, filed February 7, 2012, to add benefit claims to Israeli Patent Application Nos. 124895 filed June 14, 1998, 127093 filed November 16, 1998 and 127869 filed December 30, 1998, by way of issuance of a certificate of correction.

The petition under 37 CFR 1.55(c) is GRANTED.

By decision mailed October 3, 2011, the initial petition filed August 25, 2011 was dismissed. The requirements as set forth in MPEP 201.16 were met1, except the claim submitted with the

<sup>&</sup>lt;sup>1</sup> A certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 may be requested and issued in order to perfect a claim for foreign priority benefit in a patented

petition was not included in either an oath or declaration (37 CFR 1.63(c)(2)) or an Application Data Sheet (37 CFR 1.76(b)(6)) as required by 37 CFR 1.55(c).

The renewed petition includes an application data sheet containing the added priority claims to the foreign Israeli applications. The requirements of 37 CFR 1.55(c) have now been met.

A corrected Filing Receipt, which includes the priority claim to the above-noted, foreign applications, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the foreign applications. A determination that patentee is entitled to claim benefit of the foreign applications will be made by the Examiner prior to the mailing of a certificate of correction.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under  $37\ \text{CFR}\ 1.55(c)$ .

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

Enclosure: Corrected Filing Receipt

continuing application if the requirements of 35 U.S.C. 119(a)-(d) or (f) had been satisfied in the parent application prior to issuance of the patent and the requirements of 37 CFR 1.55(a) are met. Furthermore, if the continuing application (other than a design application), which issued as a patent, was filed on or after November 29, 2000, in addition to the filing of a certificate of correction request, patentee must also file a petition for an unintentionally delayed foreign priority claim under 37 CFR 1.55(c)<sup>1</sup>.



NUMBER

09/730,326

## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Dox 1450 Alexandria, Vignina 22313-1450

_			www.uspto.gov		
FILING or	GRP ART				
371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS IND CLAIMS	
12/04/2000	2135	1558	1259-0013	6 2	

11788 Stolowitz Ford Cowger LLP / ptomail 621 SW Morrison Street Suite 600 Portland, OR 97205

**CONFIRMATION NO. 8195** CORRECTED FILING RECEIPT



Date Mailed: 03/23/2012

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

#### Applicant(s)

Daniel Schreiber, Beit Shemesh, ISRAEL: Andrew Goldman, Beit Shemesh, ISRAEL:

Power of Attorney: The patent practitioners associated with Customer Number 73552

#### Domestic Priority data as claimed by applicant

This application is a DIV of 09/397,331 09/14/1999 PAT 6298446 which is a CIP of 09/313,067 05/17/1999 PAT 6209103

Foreign Applications (You may be eligible to benefit from the Patent Prosecution Highway program at the USPTO. Please see <a href="http://www.uspto.gov">http://www.uspto.gov</a> for more information.)

ISRAEL IL 127093 11/16/1998 ISRAEL IL 127869 12/30/1998

ISRAEL IL 124895 06/14/1998

If Required, Foreign Filing License Granted: 12/28/2000

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US 09/730.326

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

#### Title

COPYRIGHT PROTECTION OF DIGITAL IMAGES TRANSMITTED OVER NETWORKS

## **Preliminary Class**

726

#### PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filling of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filling of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

#### LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

## **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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PERKINS COIE LLP P.O. BOX 1208 SEATTLE WA 98111-1208

# MAILED SEP 28 2011 OFFICE OF PETITIONS

In re Patent No. 7,155,744

Daniel Schreiber and

Andrew Goldman

Issue Date: December 26, 2006

Application No. 09/730,626

Filed: December 4, 2000

Title: COPYRIGHT PROTECTION OF

DIGITAL IMAGES TRANSMITTED OVER

NETWORKS

: DECISION DISMISSING PETITION

: UNDER 37 CFR 1.55(c)

: and

: ON REQUEST FOR CERTIFICATE

: OF CORRECTION

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 37 C.F.R. 1.55(c) AND REQUEST FOR CERTIFICATE OF CORRECTION, filed August 25, 2011, to add benefit claims to Israeli Patent Application Nos. 124895 filed June 14, 1998, 127093 filed November 16, 1998 and 127869 filed December 30, 1998, by way of issuance of a certificate of correction.

As stated in MPEP 201.16,

A certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 may be requested and issued in order to perfect a claim for foreign priority benefit in a patented continuing application if the requirements of 35 U.S.C. 119(a)-(d) or (f) had been satisfied in the parent application prior to issuance of the patent and the requirements of 37 CFR 1.55(a) are met. Furthermore, if the continuing application (other than a design application), which issued as a patent, was filed on or after November 29, 2000, in addition to the filing of a certificate of correction request, patentee must also file a petition for

an unintentionally delayed foreign priority claim under 37 CFR  $1.55(c)^{1}$ .

Patentee states that with respect to IL 127093 and 127869 the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/397,331 (now U.S. Patent No. 6,298,446) prior to issuance of the patent. Patentee states that with respect to IL 124895 the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/313,067 (now U.S. Patent No. 6,209,103) prior to issuance of the patent. This application is a continuing application of the '331 and '067 applications. A review of the '103 patent confirms that it issued on March 27, 2001 with the foreign priority benefit thereon. By certificate of correction signed September 27, 2011, the '446 patent was corrected to include the foreign priority benefit thereon to all three Israeli applications.

Accompanying the petition to accept the delayed claim of priority is a certificate of correction setting forth the requested foreign priority claim and payment of the certificate of correction processing fee.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require

However, a claim to foreign priority benefits cannot be perfected via a certificate of correction if the requirements of 35 U.S.C. 119(a)-(d) or (f) had not been satisfied in the patented application, or its parent, prior to issuance and the requirements of 37 CFR 1.55(a) are not met. In this latter circumstance, the claim to foreign priority benefits can be perfected only by way of a reissue application in accordance with the rationale set forth in Brenner v. State of Israel, 158 USPQ 584.

additional information where there is a question whether the delay was unintentional); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application filed December 4, 2000, was filed after November 29, 2000. The petition includes a claim for priority to foreign application/patent No. IL 124895, filed June 14, 1998; 127093 filed November 16, 1998; and 127869 filed December 30, 1998. Moreover, the petition includes payment of the surcharge and a proper statement of unintentional delay. Intermediate application No. 09/313,067 filed May 17, 1999 was filed within 12 months of the filing date of all 3 foreign applications.

However, requirement (2) above is not met. Israeli application Nos. 127093 and 127869 are referred to in the declaration submitted on filing; however, no box is present or checked to claim priority. With respect to Israeli application No. 124895, the claim is not included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6)).

In view thereof, the petition under 37 CFR 1.55(c) is DISMISSED.

Any renewed petition must satisfy requirement (2) above.

The correspondence address of record remains with Perkins & Coie. A courtesy copy of the decision is being mailed to the address on the petition. All future correspondence will be sent to the address of record until such time as a proper change of correspondence address is filed.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petlitions Attorney

Office of Petitions

cc: Dawn-Marie Bey King & Spaulding

1700 Pennsylvania Avenue, NW

Suite 200

Washington, DC 20006



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

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**MAILED** 

OCT 15 2010

**OFFICE OF PETITIONS** 

**DECISION ON PETITION** 

In re Application of HERRMANN

Application No. 09/730,691

Filed: 12/06/2000

Attorney Docket No. EN11021

This is a decision on the petition under 37 CFR 1.181, filed July 8, 2005, to withdraw the holding of abandonment for the above-identified application.

On October 5, 2004, the Office mailed a non-final Office action, which set three-month shortened statutory period for reply. The application was held abandoned and a Notice of Abandonment was mailed on June 23, 2005.

In the present petition, applicants asserted that they filed a timely reply to the non-final Office action of October 5, 2004. In support of the assertion, applicants supplied a copy of the reply in the form of an amendment with a certificate of facsimile transmission under 37 CFR 1.8 dated December 10, 2004. Additionally, applicants provided a copy of the sending unit's transmission report and the USPTO's Auto-Reply Facsimile Transmission, acknowledging receipt of 5 pages (including the cover sheet) in USPTO on December 10, 2004.

Upon reviewing the record, the Office has located the reply, filed December 10, 2004, in the Image File Wrapper for the present application. Accordingly, the reply is considered timely filed on December 10, 2004. The petition under 37 CFR 1.181 is **granted**. The holding of abandonment is hereby withdrawn. The application is restored to pending status, as the reply was timely filed.

The matter is being referred to Technology Center Art Unit 2836 for a review of the reply filed on December 10, 2004.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell Senior Petitions Attorney

C. f. Donnell

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

ROGER A. GILCREST 250 WEST STREET COLUMBUS OH 43215-2538 MAILED OCT 03 2011

OFFICE OF PETITIONS

In re Patent No. 6,523,333

Issue Date: February 25, 2003

Application No. 09/731,145 : ON PETITION

Filed: December 6, 2000

Attorney Docket No. **003981-00001** 

This is a decision on the petition under 37 CFR 1.378(c), filed September 16, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight February 25, 2011, for failure to pay the  $7\frac{1}{2}$  year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

JoAnne Burke

Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		LY DELAYED P ATENT (37 CF)	RAYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,407,516	2002-06-18	09/731,216	2000-12-06	4855-000001
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	application leading to is	ssuance of that pa	tent to ensure the fe	entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
	ims, or has previously ————————————————————————————————————		ity status. See 37 C	FR 1.27.
	no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
7 ½ year	(1552)		● 7½ year	(2552)
11 ½ year	(1553)		○ 11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	1 558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES
	tates: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am		
An attorney	or agent registered to	oractice before the	Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	pehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on	
The assigne	ee of record of the entir	e interest		

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner		
A signature of form of the sig	f the applicant or representative is required in accordance with 37 CFR 1.33 a gnature	nd 10.18. Please see 37 CFR	1.4(d) for the
Signature	/Christopher A. Eusebi/	Date (YYYY-MM-DD)	2010-08-20
Name	Christopher A. Eusebi	Registration Number	44672

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6407516

Issue Date:

June 18,2002

Application No. 09731216

Filed:

December 6,2000

Attorney Docket No. 4855-000001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

August 20,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

August 20,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PERKINS COIE LLP P.O. BOX 1208 SEATTLE WA 98111-1208

MAILED
SEP 292011
OFFICE OF PETITIONS

In re Patent No. 6,353,892

Daniel Schreiber and

Andrew Goldman : DECISION DISMISSING PETITION

Application No. 09/731,544 : UNDER 37 CFR 1.55(c)

Filed: December 5, 2000 : and

Title: COPY PROTECTION OF : ON REOUEST FOR CERTIFICATE

DIGITAL IMAGES TRANSMITTED OVER : OF CORRECTION

NETWORKS

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 37 C.F.R. 1.55(c) AND REQUEST FOR CERTIFICATE OF CORRECTION, filed August 25, 2011, to add a benefit claim to Israeli Patent Application No. 124895 filed June 14, 1998, by way of issuance of a certificate of correction.

As stated in MPEP 201.16,

A certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 may be requested and issued in order to perfect a claim for foreign priority benefit in a patented continuing application if the requirements of 35 U.S.C. 119(a)-(d) or (f) had been satisfied in the parent application prior to issuance of the patent and the requirements of 37 CFR 1.55(a) are met. Furthermore, if the continuing application (other than a design application), which issued as a patent, was filed on or after November 29, 2000, in addition to the filing of a certificate of correction request, patentee must also file a petition for

an unintentionally delayed foreign priority claim under 37 CFR  $1.55(c)^{1}$ .

Patentee states that the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/313,067 (now U.S. Patent No. 6,209,103) prior to issuance of the patent. This application is a continuing application of the '067 application. A review of the '103 patent confirms that it issued on March 27, 2001 with the foreign priority benefit thereon.

Accompanying the petition to accept the delayed claim of priority is a certificate of correction setting forth the requested foreign priority claim and payment of the certificate of correction processing fee.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in án Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

However, a claim to foreign priority benefits cannot be perfected via a certificate of correction if the requirements of 35 U.S.C. 119(a)-(d) or (f) had not been satisfied in the patented application, or its parent, prior to issuance and the requirements of 37 CFR 1.55(a) are not met. In this latter circumstance, the claim to foreign priority benefits can be perfected only by way of a reissue application in accordance with the rationale set forth in Brenner v. State of Israel, 158 USPQ 584.

This application filed December 5, 2000, was filed after November 29, 2000. The petition includes a claim for priority to foreign application/patent No. IL 124895, filed June 14, 1998. Moreover, the petition includes payment of the surcharge and a proper statement of unintentional delay. Intermediate application No. 09/313,067 filed May 17, 1999 was filed within 12 months of the filing date of the foreign application, June 14, 1998.

However, requirement (2) above is not met. The claim is not included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6)).

In view thereof, the petition under 37 CFR 1.55(c) is **DISMISSED**.

Any renewed petition must satisfy requirement (2) above.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

cc: Dawn-Marie Bey
King & Spaulding

1700 Pennsylvania Avenue, NW

Suite 200

Washington, DC 20006



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PERKINS COIE LLP P.O. BOX 1208 SEATTLE WA 98111-1208

MAILED SEP 292011

In re Patent No. 7,076,469

Daniel Schreiber and

Andrew Goldman

Issue Date: July 11, 2006

Application No. 09/731,572

Filed: December 5, 2000

Title: COPYRIGHT PROTECTION OF

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NETWORKS

OFFICE OF PETITIONS

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 37 C.F.R. 1.55(c) AND REQUEST FOR CERTIFICATE OF CORRECTION, filed August 25, 2011, to add benefit claims to Israeli Patent Application Nos. 124895 filed June 14,

: DECISION DISMISSING PETITION

: ON REQUEST FOR CERTIFICATE

: UNDER 37 CFR 1.55(c)

As stated in MPEP 201.16,

A certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 may be requested and issued in order to perfect a claim for foreign priority benefit in a patented continuing application if the requirements of 35 U.S.C. 119(a)-(d) or (f) had been satisfied in the parent application prior to issuance of the patent and the requirements of 37 CFR 1.55(a) are met. Furthermore, if the continuing application (other than a design application), which issued as a patent, was filed on or after November 29, 2000, in addition to the filing of a certificate of correction request, patentee must also file a petition for

1998, 127093 filed November 16, 1998 and 127869 filed December 30, 1998, by way of issuance of a certificate of correction.

: and

: OF CORRECTION

an unintentionally delayed foreign priority claim under 37 CFR  $1.55(c)^{1}$ .

Patentee states that with respect to IL 127093 and 127869 the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/397,331 (now U.S. Patent No. 6,298,446) prior to issuance of the patent. Patentee states that with respect to IL 124895 the requirements of 35 U.S.C. 119(a)-(d) were satisfied in parent application No. 09/313,067 (now U.S. Patent No. 6,209,103) prior to issuance of the patent. This application is a continuing application of the '331 and '067 applications. A review of the '103 patent confirms that it issued on March 27, 2001 with the foreign priority benefit thereon. By certificate of correction signed September 27, 2011, the '446 patent was corrected to include the foreign priority benefit thereon to all three Israeli applications.

Accompanying the petition to accept the delayed claim of priority is a certificate of correction setting forth the requested foreign priority claim and payment of the certificate of correction processing fee.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
- (3) the surcharge as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require

However, a claim to foreign priority benefits cannot be perfected via a certificate of correction if the requirements of 35 U.S.C. 119(a)-(d) or (f) had not been satisfied in the patented application, or its parent, prior to issuance and the requirements of 37 CFR 1.55(a) are not met. In this latter circumstance, the claim to foreign priority benefits can be perfected only by way of a reissue application in accordance with the rationale set forth in Brenner v. State of Israel, 158 USPQ 584.

additional information where there is a question whether the delay was unintentional); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application filed December 5, 2000, was filed after November 29, 2000. The petition includes a claim for priority to foreign application/patent No. IL 124895, filed June 14, 1998; 127093 filed November 16, 1998; and 127869 filed December 30, 1998. Moreover, the petition includes payment of the surcharge and a proper statement of unintentional delay. Intermediate application No. 09/313,067 filed May 17, 1999 was filed within 12 months of the filing date of all 3 foreign applications.

However, requirement (2) above is not met. Israeli application Nos. 127093 and 127869 are referred to in the declaration submitted on filing; however, no box is present or checked to claim priority. With respect to Israeli application No. 124895, the claim is not included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6)).

In view thereof, the petition under 37 CFR 1.55(c) is DISMISSED.

Any renewed petition must satisfy requirement (2) above.

The correspondence address of record remains with Perkins & Coie. A courtesy copy of the decision is being mailed to the address on the petition. All future correspondence will be sent to the address of record until such time as a proper change of correspondence address is filed.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3219.

Nandy Jahnson

Senior Patitions Attorney

Office of Petitions

cc: Dawn-Marie Bey King & Spaulding

1700 Pennsylvania Avenue, NW

Suite 200

Washington, DC 20006



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Stolowitz Ford Cowger LLP / ptomail 621 SW Morrison Street Suite 600 Portland OR 97205

MAILED MAR 01 2012 OFFICE OF PETITIONS

: DECISION GRANTING PETITION

In re Patent No. 7,076,469

Daniel Schreiber and

Andrew Goldman

Issue Date: July 11, 2006

Application No. 09/731,572 : 37 CFR 1.55(c) and 1.78(a)(3)

: UNDER

Filed: December 5, 2000 : and

Title: COPYRIGHT PROTECTION OF : ON REOUEST FOR CERTIFICATE

DIGITAL IMAGES TRANSMITTED OVER : OF CORRECTION

NETWORKS

This is a decision on the REQUEST FOR RECONSIDERATION OF THE DECISION TO DISMISS THE PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM OF PRIORITY UNDER 37 C.F.R. 1.55(c) AND REQUEST FOR CERTIFICATE OF CORRECTION, filed February 7, 2012, to add benefit claims to Israeli Patent Application Nos. 124895 filed June 14, 1998, 127093 filed November 16, 1998 and 127869 filed December 30, 1998, by way of issuance of a certificate of correction. This petition is also treated pursuant to 37 CFR 1.78(a)(3) as applicant requests correction to add the claim under 35 U.S.C. 120 to application No. 09/313,067 as a continuation-in-part via intermediate application No. 09/397,331 to which priority was properly claimed during pendency of this application.

The petition under 37 CFR 1.55(c) and 1.78(a)(3) is **GRANTED**.

By decision mailed September 29, 2011, the initial petition filed August 25, 2011 was dismissed. The requirements as set forth in  $\mathtt{MPEP}\ \mathtt{201.16}\ \mathtt{were}\ \mathtt{met}^{\mathtt{1}}$ , except the claim submitted with the

 $<sup>^{1}</sup>$  A certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 may be requested and issued in order to perfect a claim for foreign priority benefit in a patented continuing application if the requirements of 35 U.S.C. 119(a)-(d) or (f) had been satisfied in the parent application prior to issuance of the patent and the requirements of 37 CFR 1.55(a)

petition was not included in either an oath or declaration (37 CFR 1.63(c)(2)) or an Application Data Sheet (37 CFR 1.76(b)(6)) as required by 37 CFR 1.55(c).

The renewed petition includes an application data sheet containing the added priority claims to the foreign Israeli applications and the prior-filed nonprovisional application. The requirements of 37 CFR 1.55(c) and 1.78(a)(3) have now been met.

A corrected Filing Receipt, which includes the priority claim to the above-noted, foreign applications and prior-filed provisional application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the foreign applications or the prior-filed nonprovisional application. A determination that patentee is entitled to claim benefit of the foreign applications or prior-filed nonprovisional application will be made by the Examiner prior to the mailing of a certificate of correction.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.55(c) and 1.78(a)(3).

Any inquiries directly pertaining to this matter may be directed at the undersigned at (571) 272-3219.

Nancy Johnson

Senior Petitions Attorney

Office of Petitions

Enclosure: Corrected Filing Receipt

are met. Furthermore, if the continuing application (other than a design application), which issued as a patent, was filed on or after November 29, 2000, in addition to the filing of a certificate of correction request, patentee must also file a petition for an unintentionally delayed foreign priority claim under 37 CFR  $1.55(c)^1$ .



## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.usplo.gov

APPLICATION	FILING or	GRP ART			<u> </u>	
NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/731,572	12/05/2000	3621	2278	1259-0015	86	4

11788 Stolowitz Ford Cowger LLP / ptomail 621 SW Morrison Street Suite 600 Portland, OR 97205 CONFIRMATION NO. 6837 CORRECTED FILING RECEIPT



Date Mailed: 03/01/2012

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

## Applicant(s)

Daniel Schreiber, Beit Shemesh, ISRAEL; Andrew Goldman, Beit Shemesh, ISRAEL;

Power of Attorney: The patent practitioners associated with Customer Number 73552

## Domestic Priority data as claimed by applicant

This application is a DIV of 09/397,331 09/14/1999 PAT 6298446 \*

which is a CIP of 09/313,067 05/17/1999 PAT 6209103

(\*)Data provided by applicant is not consistent with PTO records.

Foreign Applications (You may be eligible to benefit from the Patent Prosecution Highway program at the

USPTO. Please see <a href="http://www.uspto.gov">http://www.uspto.gov</a> for more information.)

ISRAEL 124895 06/14/1998 ISRAEL 127093 11/16/1998 ISRAEL 127869 12/30/1998

## If Required, Foreign Filing License Granted: 01/12/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/731.572** 

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

page 1 of 3

Title

COPYRIGHT PROTECTION OF DIGITAL IMAGES TRANSMITTED OVER NETWORKS

## **Preliminary Class**

705

## PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

#### LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

## **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

page 2 of 3

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

## **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

#### SelectUSA

The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation and commercialization of new technologies. The USA offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to encourage, facilitate, and accelerate business investment. To learn more about why the USA is the best country in the world to develop technology, manufacture products, and grow your business, visit <u>SelectUSA.gov</u>.

DATE	:04-11-12				
TO SPE OF	: ART UNIT	_			
SUBJECT	: Request for Certificate of Correct	tion for Appl. No.:	09731572	Patent No.:	707
		C	ofC mailroom date:	02-07-12	
Diagon room	oond to this request for a cer		_		
FOR IFW F		incate or correct	ion within adye	•	
the IFW ap	ew the requested changes/copication image. No new mathre the claims be changed.	orrections as sho tter should be in	own in the COCII troduced, nor sho	N document(s ould the scop	s) in e or
	nplete the response (see beloment code <b>COCX</b> .	ow) and forward	the completed re	esponse to sc	annin
FOR PAPE	R FILES:				
correction.	Please complete this form (	orrections as sho see below) and f	orward it with the	e file to:	
Certif Rand		see below) and f		e file to:	
Certif Rand Palm	Please complete this form (stream of Correction Branch (CofC) olph Square – 9D10-A	see below) and f	Angela Green	Law	
Certii Rand Palm Note:	Please complete this form (stream of Correction Branch (CofC) olph Square – 9D10-A Location 7580	see below) and f	Angela Green	Fa n 571.272.9005	
Certif Rand Palm Note:  Thank You The reques	Please complete this form (stream of Correction Branch (CofC) olph Square – 9D10-A Location 7580	see below) and f	Angela Green CofC Branch	n 571.272.9005 703-756-1814	
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HARRINGTON & SMITH ATTORNEYS AT LAW, LLC 4 RESEARCH DRIVE SUITE 202 SHELTON, CT 06484

MAILED JAN 25 2011

OFFICE OF PETITIONS

In re Application of Stefano Faccin, et al. Application No. 09/731,758

ON PETITION

Filed: December 8, 2000

Attorney Docket No. 800.0529.U1

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 13, 2010, to revive the above-identified application.

# The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of June 22, 2010 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on August 23, 2010. See MPEP 1214.06.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2452 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Aptil M. Wise

Petitions Examiner
Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

MARSHALL GERSTEIN & BORUN LLP (FISHER) 233 SOUTH WACKER DRIVE 6300 WILLIS TOWER CHICAGO, IL 60606

MAILED
AUG 04-2011
OFFICE OF PETITIONS

In re Patent No. 6,577,985

Issue Date: June 10, 2003

Application No. 09/732,093

Filed: December 7, 2000

Attorney Docket No. EIM095/4-2

**NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Ding Petitions Examiner Office of Petitions

cc: Kendal M. Sheets

**Authorized Representative** 

**CPA** Global

2318 Mill Road, Suite 12 Floor

Alexandria, VA 22314

MCDERMOTT WILL & EMERY LLP 600 13<sup>TH</sup> STREET, N.W. WASHINGTON, DC 20005-3096

MAILED SEP 2 2 2011

In re Patent No. 7,012,907

OFFICE OF PETITIONS

Issue Date: May 14, 2006

ON PETITION

Application No. 09/732,186 Filed: December 8, 2000

Patentee(s) Donald L. Schilling

This is a decision on the petition under 37 CFR 1.378(c), filed August 22, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Evam

Petitions Examiner Office of Petitions

cc:

Mimi Hsu

198 Brighton Avenue Long Branch, NJ 07740



COMMISSIONER FOR PATENTS
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Casimir Jones, S.C. 2275 Deming Way Suite 310 Middleton, WI 53562

MAILED

NOV 1 0 2010

OFFICE OF PETITIONS

In re Bruce P. Neri et al.

Application No.: 09/732,622 Filed: December 8, 2000

Patent No.: 7,432,048

Issued: October 7, 2008

: DECISION

: GRANTING

: PETITION

This is a decision on the December 10, 2008 petition requesting issuance of a corrected patent pursuant to 35 U.S.C. 254 and 37 CFR 1.322(b), as supplemented on December 16, 2008 ("the supplemented December 10, 2008 petition").

The supplemented December 10, 2008 petition is before the Office of Patent Legal Administration (OPLA) for consideration.

The supplemented December 10, 2008 petition is granted.

The Image for U.S. Patent No. 7,432,048 in the USPTO Patent Full-Text and Image Database maintained by the Office will be updated to include the corrected patent in the form of a Certificate of Correction, in addition to the original, incorrectly printed patent. The Office will also provide a courtesy corrected reprint of U.S. Patent No. 7,432,048 for patent owner's records.

Any inquiry concerning this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.

Brian E. Hanlon

Director

Office of Patent Legal Administration
Office of the Associate Commissioner
for Patent Examination Policy

SUBJECT Please respo	: May 24. 2011 : ART UNIT1638 : Request for Certificate of Correct	
SUBJECT Please respo		
·	: Request for Certificate of Correct	
·		tion for Appl. No.: <u>09733507</u> Patent No.: <u>7078591</u>
·	•	CofC mailroom date: Sep. 29,
	nd to this request for a cer	tificate of correction within 7 days.
FOR IFW FIL	<u>.ES</u> :	
the IFW appli		orrections as shown in the <b>COCIN</b> document(s) in tter should be introduced, nor should the scope or
•	lete the response (see beloent code COCX.	ow) and forward the completed response to scanning
FOR PAPER	FILES:	
		orrections as shown in the attached certificate of see below) and forward it with the file to:
	olph Square – 9D10-A	
raiii i	Location 7580	
raiiii i	Location 7580	Certificates of Correction Branch
raiii i	Location 7580	Certificates of Correction Branch 703-756-1814
	Location 7580 For Your Assistance	
Thank You F	For Your Assistance	
Thank You F The request Note your decision	For Your Assistance	703-756-1814
Thank You F The request Note your decision	For Your Assistance for issuing the above-ide on the appropriate box.	703-756-1814entified correction(s) is hereby:
Thank You F The request Note your decision	For Your Assistance for issuing the above-ide on the appropriate box.  Approved	entified correction(s) is hereby:  All changes apply.

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6634274	2003-10-21	09734279	2000-12-11	18079-002			
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	application leading to is	suance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR			
LOSS OF ENTITL	▼       Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.         LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS         □ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)						
NOT Small Entity			Small Entity				
Fee	Code		Fee	Code			
3 ½ year	(1551)		3 ½ year	(2551) (2552)			
7 ½ year	(1552)		7 ½ year 11 ½ year	(2553)			
○ 11 ½ year	r (1553)		11 /2 year	(2333)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."						
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office     A sole patentee							
		authorized to sign	this submission on b	ehalf of all the other natentees			
O A Joint pater	nee, reening macrain a	authorized to sign	uns submission on b	ehalf of all the other patentees.			
A joint patentee; all of whom are signing this e-petition							
The assigne	ee of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature /David O. Simmons/ Date (YYYY-MM-DD) 2012-01-04						
Name	David O. Simmons	Registration Number	43124			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6634274

Issue Date:

October 21,2003

Application No. 09734279

Filed:

December 11,2000

Attorney Docket No.

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

January 4,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 4,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



BRUNELL IP, PC C/O CPA GLOBAL P.O. BOX 52050 MINNEAPOLIS MN 55402

# MAILED

JUN 08 2011

OFFICE OF PETITIONS

In re Application of David Resnick, et al.

Application No. 09/734,988

Filed: December 11, 2000

Attorney Docket No. PreCash 0021

**DECISION GRANTING PETITION** 

UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, June 7, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on May 20, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. \(^1\)

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3694 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



BRUNELL IP, PC C/O CPA GLOBAL P.O. BOX 52050 MINNEAPOLIS MN 55402

MAILED
JUL 2 7 2011
OFFICE OF PETITIONS

In re Application of

David Resnick, et al.

Application No. 09/734,988 Filed: December 11, 2000

DECISION DISMISSING PETITION

: UNDER 37 CFR 1.313(a)

Attorney Docket No. PRECASH 0021

This is a decision on the petition under 37 CFR 1.313(a), filed July 25, 2011, requesting withdrawal of the above-identified application from issue.

The petition is **dismissed** as moot for the reasons stated below.

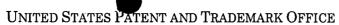
A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on June 30, 2011, with the issue fee being due on or before September 30, 2011. The petition states that the issue fee in this case has not been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to Terri Johnson at (571) 272-2991.

The matter is being referred to Technology Center AU 3694 for appropriate processing of the RCE filed July 25, 2011, and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions





Paper No. 9

CLARK A. WILKINSON P.O. BOX 452 WHITETHORN CA 95589

MAILED APR 06 2011 **OFFICE OF PETITIONS** 

In re Patent No. 6,417,431

Issue Date: 07/09/2002

Application Number: 09/735,133

Filing Date: 12/11/2000

Title of Invention: GRIPICK

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.378(b), filed on February 15, 2011, to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further

 $<sup>^{1}</sup>$  A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must be include

<sup>(1)</sup> the required maintenance fee set forth in § 1.20(e) through (g);

<sup>(2)</sup> the surcharge set forth in §1.20(I)(1); and

<sup>(3)</sup> a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

reconsideration or review of the matter will be undertaken by the Director.

The patent issued on July 9, 2002. The first maintenance fee was accepted on petition under 37 CFR 1.378(c). The second maintenance fee could have been paid during the period from July 9, 2009 through January 11, 2010, or, with a surcharge, during the period from January 12, 2010 through July 9, 2010. The patent expired at midnight on July 9, 2010, for failure to timely pay the second maintenance fee.

Petitioner, pro se, asserts, in pertinent part:

I suffer from a variety of medical conditions resulting from a head-on collision by a negligent driver. I suffer traumatic arthritis, PTSD, ADHD, and have had numerous visits to my doctor in regard to these problems. At the time when my maintenance fee's were due the arthritis moved into my knees and have crippled my ability to walk. So to have all these medical problems hit me at the time I should have been maintaining the USPTO due dates. The delay in payment was unavoidable until now.

1. I became aware of the expired patent when I received the notice in the mail on 08/09/10.

Petitioner has further included a letter from his physician, Dr. Wendi S. Joiner, stating, *inter alia*, that petitioner's failure to pay his patent maintenance fees was unavoidable due to his medical conditions.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". A patent owner's failure to pay a maintenance fee may be considered to have been "unavoidable" if the patent owner "exercised the due care of a reasonably prudent person." This determination is to be made on a "case-by-case basis, taking all the facts and circumstances into account." Unavoidable delay under 35 U.S.C. § 41(b) is measured by the same standard as that for reviving an abandoned application under 35

<sup>&</sup>lt;sup>2</sup> 35 U.S.C. § 41(c)(1).

Ray v. Lehman, 55 F.3d 606, 608-09 (Fed.Cir.), <u>cert. denied</u>, -- U.S. ---, 116 S.Ct. 304, L.Ed.2d 209 (1995).

Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

U.S.C. § 133.<sup>5</sup> Under 35 U.S.C. § 133, the Director may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to have been "unavoidable". Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.<sup>6</sup> However, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.<sup>7</sup> In view of In re Patent No. 4,409,763,8 this same standard will be applied to determine whether "unavoidable" delay within the meaning of 37 CFR 1.378(b) occurred.

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the second maintenance fee for this patent. 10

35 U.S.C.  $\S$  41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish that the delay was unavoidable. 11 35 U.S.C.  $\S$  133 does not require the Director to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing). Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to

<sup>&</sup>lt;sup>5</sup> <u>In re Patent. No. 4,409,763</u>, 7 USPQ2d 1798, 1800 (PTO Comm'r 1988).

<sup>&</sup>lt;sup>6</sup> Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); <u>In re Mattullath</u>, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); <u>Ex parte Henrich</u>, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

<sup>8 7</sup> USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd sub nom. Rydeen v. Quigg, 748
937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992).

<sup>9 &</sup>lt;u>Ray</u>, 55 F.3d at 609, 34 USPQ2d at 1788.

the satisfaction of the Director that the delay in payment of a maintenance fee is unavoidable.  $^{12}$ 

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.378(b):

- (1) The delay in reply that originally resulted in expiration;
- (2) The delay in filing an initial petition pursuant to § 1.378(b) to revive the application; and
- (3) The delay in filing a grantable petition pursuant to § 1.378(b) to revive the application. 13

This petition lacks the required showing in regards to periods (1) and (2) above.

In this regard, a showing of "unavoidable" delay based upon incapacitation must establish that petitioner's incapacitation was of such nature and degree as to render petitioner unable to conduct business (e.g., correspond with the Office) during the period between July 9, 2010 and February 15, 2011. Such a showing must be supported by a statement from petitioner's treating physician, and such statement must provide the nature and degree of petitioner's incapacitation during this abovementioned period.

The petition must be dismissed at this time because further information is needed in order to determine whether the circumstances surrounding the delay in payment constitute unavoidable delay. While it is noted that petitioner has provided a statement from petitioner's treating physician, the information provided does not adequately describe the nature and degree of petitioner's incapacitation during the period from when the maintenance fee was due until the filing of the present petition. Specifically, petitioner must explain specifically when he was injured in the automobile accident, and explain in what manner he was incapacitated, and describe how the incapacitation made the delay in payment of the maintenance fee unavoidable.

While the Office is mindful the problems encountered by petitioner, a renewed petition providing a detailed discussion of

See Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992); Ray v. Lehman, supra.

See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 at 53158 (October 10, 1997).

the nature and degree of petitioner's incapacitation during the period from when the maintenance fee was due until the filing of the present petition is nonetheless required.

Petitioner is cautioned to avoid submitting personal information in a patent application that may contribute to identity theft. If personal information such as social security numbers, bank account numbers, or credit card numbers are included in documents submitted to the USPTO (other than a check or credit card authorization form PTO-2038 submitted for payment purposes), petitioners should consider redacting such personal information from the documents before submitting them to the USPTO. type of personal information is never required by the USPTO to support a petition or an application. Petitioner is advised that any information submitted in an application is available to the public after publication of the application (unless a nonpublication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, information from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the address noted below.

## ALTERNATIVE VENUE

Petitioner may wish, in the alternative, to request reconsideration in the form of a petition under 37 CFR 1.378(c), requesting that the unintentionally delayed payment of a maintenance fee be accepted. A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be filed within twenty four months from the end of the six month grace period (e.g., the expiration date of the patent and be accompanied by (1) a verified statement that the delay was unintentional, (2) payment of the appropriate maintenance fee, unless previously submitted, (3) payment of the \$1,640.00 surcharge (the \$700.00 surcharge already paid may be credited thereto leaving a balance due of \$940.00) set forth in 37 CFR 1.20(i)(2). The statement can be verified by using the

attached petition form which includes a declaration according to 37 CFR 1.68.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the patent was expired until the filing of the petition to reinstate under 37 CFR 1.378(c), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.378(c).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at 571-272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

Encl: PTO/SB/66



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

CLARK A. WILKINSON P.O. BOX 452 WHITETHORN CA 95589

MAILED
JUN 1 6 2011

OFFICE OF PETITIONS

In re Patent No. 6,417,431

Issue Date: 07/09/2002

Application Number: 09/735,133

Filing Date: 12/11/2000

For: GRIPICK

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed on May 9, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is GRANTED.

This patent expired on July 9, 2010, for failure to timely pay the second maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions3



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

Intellectual Property Department Cubist Pharmaceuticals, Inc. 65 Hayden Avenue Lexington MA 02421

MAILED JAN 25 2012

In re Application of

Kelleher et al.

Application No. 09/735,191

Patent No.: 6,696,412

Filed: November 28, 2000

Issued: February 24, 2004

Attorney Docket No. C062-02 US

Title: HIGH PURITY

LIPOPEPTIDES, LIPOPEPTIDE MICELLES AND PROCESSES FOR

PREPARING SAME

OFFICE OF PETITIONS

DECISION ON PETITION

PURSUANT TO

37 C.F.R. § 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on December 20, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

Patent No.: 6,696,412

Decision on Petition pursuant to 37 C.F.R. § 1.28(c)

The deficiency payment in the amount of \$1610.00 has been received.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski

Senior Attorney

Office of Petitions

Doc Code: PET.PTA.RCAL

Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10) Approved for use through 07/31/2010. OMB 0651-0020

U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH\*

Attorney Docket Number: 56945.000004

Application Number: 09/735,446

Patent Number: 7,668,747

Filling Date (or 371(b) or (f) Date): 12-13-2000

Issue Date: 02-23-2010

First Named Thomas P. Murphy

Title: SYSTEM AND METHOD FOR PROVIDING INCENTIVES TO PURCHASERS

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

\*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /James R. Miner/	<sub>Date</sub> August 23, 2010
Name (Print/Typed) James R. Miner	Registration Number 40,444
Note: Signatures of all the inventors or assignees of record of the entire interest or their CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necess see below*.	ir representative(s) are required in accordance with 37
*Total of _1 forms are submitted.	

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 10 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 09/08/2010

Kevin T. Duncan, Esq. Hunton & Williams Suite 1200 1900 K Street, N.W. Washington, DC 20006

Applicant : Thomas P. Murphy : DECISION ON REQUEST FOR

Patent Number : 7668747: RECALCULATION of PATENTIssue Date : 02/23/2010: TERM ADJUSTMENT IN VIEWApplication No: 09/735,446: OF WYETH AND NOTICE OF INTENT TO

Filed : 12/13/2000 : ISSUE CERTIFICATE OF CORRECTION

:

The Request for Recalculation is  $\ensuremath{\mathsf{GRANTED}}$  to the extent indicated.

The patent term adjustment has been determined to be 1775 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

COMMISSIONER FOR PATENTS United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

James T. Carter 640 Turk Street, Apt. 4 San Francisco CA 94102

**MAILED** 

SEP 2.7 2010

In re Patent No. 6,326,446

OFFICE OF PETITIONS

Issue Date: December 4, 2001 Application No. 09/735,525

DECISION ON PETITION

Filed: December 14, 2000

UNDER 37 CFR 1.378(b)

For: MACROPOROUS HYPERHYDROXY

POLYMER AND ARTICLES MADE

**THEREFROM** 

This is a decision on the petition under 37 CFR 1.378(b), filed June 23, 2010, under 37 CFR 1.378(b).

The petition under 37 CFR 1.378(b) for reinstatement of expired patent is hereby **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued December 4, 2001. The second maintenance fee could have been paid from December 4, 2008 through June 4, 2009 without a surcharge, or with a surcharge during the period from June 5, 2009 through December 4, 2009. Accordingly, the patent expired on December 4, 2009 for failure to timely submit the second maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks item requirement (1) set forth above.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

Patent No. 6,326,446 Page 2

Patentee appears to attribute the failure to timely pay the second maintenance fee to the death of his attorney, Leonard Sherman, on whom he relied to remind him that the maintenance fee was due.

In this regard, patentee states:

"Mr. (Edwin) Shalloway died around 2002. Mr. (Leonard) Sherman then provided me with timely notice for three maintenance fee payments. Mr. Sherman then died five years later. Their firm closed some time later without notification. With the unavoidable loss of my lawyers and their firm, I missed paying the 5 ½ yr fee two months ago. Finally, a company is interested in licensing my patents, they informed me of the new PaIR site where this morning I discovered my Dec 4, 2009 fee was not paid."

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses the identical language, i.e. "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)). Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, patentee must show that he was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment from the time the payment was due until the filing of a grantable petition. Petitioner has failed to meet this burden.

In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a sufficient showing that any steps were emplaced by petitioner or

anyone else. In the absence of a showing that patentee or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra.

Petitioner has not provided any documentary evidence demonstrating the nature and extent of contractual obligations of Mr. Sherman to establish that Mr. Sherman was contractually bound to track the maintenance fee on behalf of patentee.

It is unclear when petitioner first became aware that the patent expired due to failure to pay the second maintenance fee. Thus, it cannot be found that the instant petition was filed within a reasonable time thereafter.

It is unclear when patentee's attorney died or when the attorney's law firm closed without notification to patentee. When and how did patentee discover that Mr. Sherman had died? Prior to the death of Mr. Sherman, what was the business routine by which patentee was made aware that a maintenance fee was due?

In view of the limited statement provided by patentee, it cannot be determined that the failure to timely submit the required maintenance fee, from the time that the maintenance fee was due until the filing of a grantable petition, was unavoidable.

Ultimately patentee bears the responsibility for timely remittance of the maintenance fee. The petition fails to establish that patentee was unavoidably delayed in making the payment. Accordingly, the Office is precluded from accepting the maintenance fee and surcharge. If reconsideration of this decision is not desired, petitioner may request a refund of this fee by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

Any renewed petition must establish that the entire period of delay from the time that the maintenance fee was due until the time of the filing of a grantable petition has been unavoidable. Petitioner is reminded that any renewed petition should entail an exhaustive effort to establish that the failure to timely pay the maintenance fee was unavoidable as after reconsideration pursuant to 37 CFR 1.378(e), no further reconsideration regarding unavoidable delay will be undertaken.

Petitioner must establish that patentee was aware of the need to pay the maintenance fee, and was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due until the filing of a grantable petition. Petitioner must establish a nexus between the events complained of and the failure to timely remit the maintenance fee.

Petitioner may wish to submit material such as but not limited to copies of any contractual agreements between the attorney and patentee whereby the attorney was engaged to track the maintenance fee; copies of any reminder letters received from the attorneys to patentee

Patent No. 6,326,446 Page 4

concerning maintenance fees for the patent; and, a detailed statement concerning the system in place for tracking the maintenance fee.

## **ALTERNATIVE REMEMDY**

Patentee may wish to consider filing a petition stating that the entire period of time, from the time that the maintenance fee was due until the filing of a grantable petition, was unintentional in the form of a petition under 37 CFR 1.378(c), copy of which is enclosed as a courtesy. The filing of a petition under 37 CFR 1.378(c) **cannot** be delayed and must be submitted within 24 months after the six-month grace period provided in § 1.362(e) and must include: (1) the required maintenance fee set forth in § 1.20 (e) through (g); (2) the surcharge set forth in § 1.20(i)(2); and (3) a statement that the delay in payment of the maintenance fee was unintentional. Petitioner is advised that the \$700.00 surcharge submitted with the instant petition could be applied to the surcharge required under 37 CFR 1.378(c)(2) which his currently \$1,640.00.

The requested change of correspondence address has been entered into the record.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS

Commissioner for Patents

Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

**Customer Service Window** 

Mail Stop Petitions Randolph Building 401 Dulany Street

Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

The requested revocation of power of attorney/change of address has been entered into the record.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Petitions Attorney Office of Petitions

Enclosure



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspb.gov

James T. Carter 640 Turk Street, Apt. 4 San Francisco CA 94102 MAILED

MAR 08 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,326,446

Issue Date: December 4, 2001 Application No. 09/735,525

Filed: December 14, 2000

Attorney Docket No. Carter-001/Div

**ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed November 5, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is GRANTED.

This patent expired on December 4, 2009 for failure to pay the 7.5 year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing (	Date ′-MM-DD)	Docket Number (if applicable)	
6,382,657	2002-05-07	09/735,844	2000-1	2-13	520.007	
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		ssuance of that pa	tent to en	sure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
	EMENT TO SMALL EN		See 37 CF	R 1.27(g)		
NOT Small Entity			Small E	Entity		
Fee 3 ½ year	Code (1551)			Fee 3 ½ year	Code (2551)	
○ 7½ year	(1552)		•	7 ½ year	(2552)	
	(1553)		0	11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must	t be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petition	า.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMEN	T OF THE M	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF T	HE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES					
	37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accorda	nnce with 37 CFR 1.4(c	d)(4) that I am				
<ul><li>An attorney</li></ul>	or agent registered to	practice before the	e Patent a	nd Tradema	ark Office	
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this subm	nission on b	ehalf of all the other patentees.	
A joint patentee; all of whom are signing this e-petition						
The assigne	The assignee of record of the entire interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature /nicholasdrouse/ Date (YYYY-MM-DD) 2010-09-03							
Name	Nicholas D. Rouse	Registration Number	36992				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6382657

Issue Date:

May 7,2002

Application No. 09735844

Filed:

December 13,2000

Attorney Docket No. 227.010

September 3,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 3,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PETITION TO	ACCEPT UNIN	TENTIONALL EXPIRED P.			AYMENT OF MAINTENANCE FEE IN AN (1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM	-DD)	Docket Number (if applicable)
6481718	2002-11-19	09/736,113	2000-12-11		DD1-037
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		ssuance of that pa	tent to ensure t	the fee	ntify: (1) the patent number and (2) the application number (s) is/are associated with the correct patent. 37 CFR
LOSS OF ENTITL	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS			1.27.
NOT Small Entity			Small Entity		
Fee  3 ½ year	Code (1551)		Fed 3 1/2 1		Code (2551)
7 ½ year	(1552)		● 7½ y	year	(2552)
11 ½ year	(1553)		O 11 ½	≨ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be p	aid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b	* *	nis petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF	THE M	AINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE M	IAINTE	NANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGN	NATOR	IIES
	tates: "Any petition und fice, or by the patentee				torney or agent registered to practice before the Patent ."
I certify, in accorda	unce with 37 CFR 1.4(c	l)(4) that I am			
<ul><li>An attorney</li></ul>	or agent registered to	oractice before the	Patent and Tr	adema	rk Office
A sole pater	itee				
A joint pater	itee; I certify that I am	authorized to sign	this submission	n on be	chalf of all the other patentees.
A joint patentee; all of whom are signing this e-petition					
The assigne	e of record of the entir	e interest			

45988

Registration Number

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner

A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature

Signature /Mark Farrell/ Date (YYYY-MM-DD) 2011-03-08

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

Name

MARK FARRELL

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6481718

Issue Date:

November 19,2002

Application No. 09736113

Filed:

December 11,2000

Attorney Docket No. DD1-037

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed

March 8,2011

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 8,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6533335	2003-03-18	09736686	2000-12-12	SEWLEX-5			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY							
▼ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.							
	EMENT TO SMALL EN to longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
11 ½ year			11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		is petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."						
I certify, in accorda	unce with 37 CFR 1.4(c	l)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office							
A sole pater							
A joint pater	itee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint patentee; all of whom are signing this e-petition							
The assigne	e of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature /Leonard Tachner/ Date (YYYY-MM-DD) 2011-06-22							
Name	Leonard Tachner	Registration Number	26344				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6533335

Issue Date:

March 18,2003

Application No. 09736686

Filed:

December 12,2000

Attorney Docket No. SEWLEX-5

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed

June 22,2011

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

June 22,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6414598

Issue Date: July 2,2002

Application No. 09736783

Filed: December 15,2000

Attorney Docket No. PAT 51193-2

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

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This is a decision on the electronic petition, filed September 13,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

MAILED
JUL 0.8 2011
OFFICE OF PETITIONS

GEOFFREY E. DOBBIN 2788 WEST 8580 SOUTH # 1007 WEST JORDAN UT 84088

In re Patent No. 6,434,874

Issue Date: August 20, 2002 Application No. 09/736,882

Filed: December 14, 2000

Attorney Docket No. GDSCH01A

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed April 7, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on August 21, 2010 for failure to pay the second maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

Cc:

RICHARD KRUKAR 4717 BALI CT NE ALBUQUERQUE, NM 87111 Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN								
		EXPIRED PA	ATENT (37 CFF	R 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)				
6,441,593	2002-08-27	09/736,907	2000-12-14	CD00136				
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).								
SMALL ENTITY Patentee cla								
	EMENT TO SMALL EN to longer entitled to sm		See 37 CFR 1.27(g)					
NOT Small Entity			Small Entity					
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)				
● 7 ½ year	(1552)		○ 7½ year	(2552)				
○ 11 ½ year	(1553)		○ 11 ½ year	(2553)				
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment				
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.					
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS				
PETITIONER(S) R REINSTATED	EQUEST THAT THE [	ELAYED PAYME	NT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT				
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES				
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent tt."				
I certify, in accorda	unce with 37 CFR 1.4(c	)(4) that I am						
_	or agent registered to p	practice before the	Patent and Tradema	ark Office				
A sole pater								
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.								
A joint pater	itee; all of whom are si	gning this e-petitio	n					
The assigne	e of record of the entire	e interest						

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
"	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Andrew J. Bateman/	Date (YYYY-MM-DD)	2010-09-14				
Name	Andrew J. Bateman	Registration Number	45573				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6441593

Issue Date:

August 27,2002

Application No. 09736907

Filed:

December 14,2000

Attorney Docket No. 0325.00432

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

September 14,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 14,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313

TRIMBLE NAVIGATION LIMITED C/O WAGNER BLECHER 123 WESTRIDGE DRIVE **WATSONVILLE CA 95076** 

MAILED

JUL 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,738,878

Issued: June 15, 2010

Application No. 09/737,294

Filed: December 13, 2000

Attorney Docket No. TRMB-2095

: LETTER REGARDING

: PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)" filed on August 13, 2010, requesting that the patent term adjustment indicated on the aboveidentified patent be corrected from 2188 days to 2345 days.

The request for review of the patent term adjustment is **DISMISSED**.

Patentee is given THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is properly reflected.

The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance, there are three periods consumed by appellate review, beginning on November 18, 2005 and ending on August 22, 2007, beginning on March 11, 2008 and ending on December 9, 2008 and beginning on July 27, 2009 and ending on January 29, 2010, which are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). The Office has also determined that the period of overlap is 399 days. Thus, B delay is 1275 days, considering the 399 days of overlap. As such, the patent term adjustment is 2118 (1457 "A delay" days + 1275 "B delay" days - 339 days of overlap - 145 Applicant delay days) days, not 2345 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision should be directed to the undersigned at

(571) 272-3212.

Patricia Faison-Bàll Senior Petitions Attorney

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

David T. Bracken The Law Office of David T. Bracken 4839 East Bond Avenue Orange CA 92869 MAILED
OCT 28 2011
OFFICE OF PETITIONS

In re Patent No. 6,566,768 :

Issue Date: May 20, 2003 :

Application No. 09/737,451 : ON PETITION

Filed: May 20, 2003

Attorney Docket No. 9909.1VI :

This is a decision on the petition under 37 CFR 1.378(c), filed October 4, 2011 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

### The petition is **GRANTED**.

This patent expired on May 21, 2011, for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO	ACCEPT UNIN		LY DELAYED P ATENT (37 CFI	RAYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6645520	2003-11-11	09737830	2000-12-14	DRM-009US
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		suance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
LOSS OF ENTITLI	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS		
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
3 ½ year 7 ½ year	(1551) (1552)		7 ½ year	(2552)
11 ½ year	` '			(2553)
SURCHARGE The surcharge requot the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b	, ,	nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTI	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."
I certify, in accorda	nnce with 37 CFR 1.4(c	l)(4) that I am		
An attorney	or agent registered to p	practice before the	Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
O A joint pater	itee; all of whom are si	gning this e-petitic	on	
The assigne	e of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	Signature /Shantanu Basu/ Date (YYYY-MM-DD) 2012-04-03						
Name	Shantanu Basu	Registration Number	43318				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 66455

6645520

Issue Date: November 11,2003

Application No. 09737830

Filed: December 14,2000

Attorney Docket No. 3200-0002.23

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:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

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This is a decision on the electronic petition, filed April 3,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JONES DAY 222 EAST 41ST ST NEW YORK NY 10017

MAILED

JAN 142011 OFFICE OF PETITIONS

In re Application of

Usuka et al.

Application No. 09/737,918

Filed: December 15, 2000

Attorney Docket No. 9080-008-999

DECISION ON PETITION

TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 19, 2010.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. See Change In Procedure For Requests To Withdraw From Representation In A Patent Application 1329 OG 99 (April 8, 2008).

Further, 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

Therefore, as there is currently no Statement under 37 CFR 3.73(b) of record in the instant application for all assignees, the Office cannot change the correspondence address to the address on the Request to Withdraw. Additionally, it is noted that SandHill Bio Corporation is not the assignee of the entire interest. A review of USPTO records reveals that The Board of Trustees of the Leland Stanford Junior University is also an assignee. The combination of all partial assignees with ownership interest is required to conduct prosecution of an application.

from Olynhi

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, an Appeal Brief was filed August 17, 2010 in the above-identified application.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

**Petitions Examiner** 

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

JONES DAY 222 EAST 41ST ST NEW YORK NY 10017

MAILED

FEB 23 2011

OFFICE OF PETITIONS

In re Application of

Usuka et al.

Application No. 09/737,918

Filed: December 15, 2000

Attorney Docket No. 9080-008-999

**DECISION ON PETITION** 

TO WITHDRAW

FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 1, 2011.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. See Change In Procedure For Requests To Withdraw From Representation In A Patent Application 1329 OG 99 (April 8, 2008).

Accordingly, as SandHill Bio Corporation is not the assignee of the entire interest the correspondence address may not be changed as requested. Should practitioners still wish to withdraw from representation, practitioners may wish to avail themselves of the procedures set forth in MPEP 402.10.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, there is an outstanding Office action mailed January 31, 2011 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski Petitions Examiner Office of Petitions

oan Oli

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		LY DELAYED P ATENT (37 CFI	PAYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,572,420	2003-06-03	09/737,932	2000-12-18	16113-3500111
				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
	ims, or has previously		tity status. See 37 C	FR 1.27.
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	NTITY STATUS nall entity status.	See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
7 ½ year	(1552)		7 ½ year	(2552)
11 ½ year	r (1553)		11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		his petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE	DELAYED PAYMI	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNA	TORY OR SIGNATO	RIES
	states: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(d	d)(4) that I am		
An attorney	or agent registered to	practice before the	e Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	pehalf of all the other patentees.
A joint pater	ntee; all of whom are s	gning this e-petition	on	
The assigne	ee of record of the entir	e interest		

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	Signature /Hans R. Troesch/ Date (YYYY-MM-DD) 2011-06-09						
Name	Hans R. Troesch	Registration Number	36950				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6572420

Issue Date: June 3,2003

Application No. 09737932

December 18,2000 Filed:

Attorney Docket No. AUS920000545US1

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

June 9,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

June 9,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6586000	2003-07-01	09738410	2000-12-14	DRM-015US
of the actual U.S. 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	nims, or has previously	claimed, small er	itity status. See 37 CI	FR 1.27.
	EMENT TO SMALL EI		See 37 CFR 1.27(g)	
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature							
Name	Shantanu Basu	Registration Number	43318				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6586000

Issue Date:

July 1,2003

Application No. 09738410

Filed:

December 14,2000

Attorney Docket No. 3200-0002.28

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

September 8,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 8,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/06/2010

CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009

Applicant: Jim Otter: DECISION ON REQUEST FORPatent Number: 7658968: RECALCULATION of PATENTIssue Date: 02/09/2010: TERM ADJUSTMENT IN VIEW

Application No: 09/738,591 : OF WYETH AND NOTICE OF INTENT TO Filed : 12/15/2000 : ISSUE CERTIFICATE OF CORRECTION

: ISSUE CERTIFICATE OF CORRECTION

:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be  ${\bf 0}$  days. The USPTO will suas ponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

Doc code: PET.OP.AGE

PTO/SB/130 (07-09)

Approved for use through 07/31/2012. OMB 0651- 0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number Description: Petition to make special based on Age/Health

PEI	IIION IO N	IAKE SPECIAL BASED OI UNDER 37 C			NI OF EXAL	WINA I ION			
		Applicati	on Informa	ation					
Application Number Confirmation Number 3801 Filing Date 2000-12-15									
Attorney Docket Number (optional)	260-106	Art Unit	3641		Examiner	Aileen Baker Felton			
First Named Inventor	Kurt Baum		'	1					
Title of Invention	Process for	the manufacture of diaminofu	razan						
(1) Statement by on (2) Certification by a showing one named	e named in a registered d inventor in	e of the following items: ventor in the application tha attorney/agent having evide the application is 65 years ears of age, or older	ence such a	as a birth certifica		, driver's license, etc.			
Given Name		Middle Name	Family	Name	Su	ffix			
Kurt			Baum						
Please see 37 CFR Select (1) or (2):	1.4(d) for th	epresentative is required in ne format of the signature.		e with 37 CFR 1.	33 and 10.1	8.			
(2) I am an attorne	y or agent reg	cation and I am 65 years of ag gistered to practice before the the application file record, sho	Patent and 1						
Signature		/joseph mueth/		Date (YYYY-MM-DD	) 2010	)-08-20			
Name		Joseph E. Mueth		Registration Number	2053	32			

Doc code: PET.OP.AGE

Description: Petition to make special based on Age/Health

Approved for use through 07/31/2012. OMB 0651- 0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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# **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

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- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
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- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about indivi duals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Application of Kurt Baum

Application No. 09738780

Filed: December 15,2000

Attorney Docket No. 260-106

:

:DECISION ON PETITION TO MAKE SPECIAL :UNDER 37 CFR 1.102(c)(1)

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 20-AUG-2010 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

#### The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

Telephone inquiries concerning this electronic decision should be directed to the Electronic Business Center at 866-217-9197.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6907490

Issue Date:

June 14,2005

Application No. 09738913

Filed:

December 13,2000

Attorney Docket No. 042390.P10407

September 3,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

The petition is **GRANTED**.

September 3,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6907490	2005-06-14	09738913	2000-12-13				
of the actual U.S. a 1.366(c) and (d).	CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).						
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.			
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		○ 7½ year	(2552)			
11 ½ year	r (1553)		11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE [	DELAYED PAYME	NT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
	states: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."			
I certify, in accorda	ance with 37 CFR 1.4(c	i)(4) that I am					
An attorney	or agent registered to p	oractice before the	Patent and Tradem	ark Office			
A sole pater	ntee						
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	pehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	ee of record of the entir	e interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	Signature /Kendal M. Sheets/ Date (YYYY-MM-DD) 2010-09-03						
Name	Kendal M. Sheets	Registration Number	47077				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



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MAILED

OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA VA 22320-4850

NOV 22 2011 OFFICE OF PETITIONS

In re Patent No. 6,559,455

Issue Date: May 6, 2003

Application No. 09/739,585 ON PETITION

Filed: December 18, 2000

Attorney Docket No. 2000-109

This is a decision on the petition under 37 CFR 1.378(c), filed October 28, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

This patent expired at midnight May 6, 2011, for failure to pay the 7½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The petition is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

A petition to accept the unintentionally delayed payment of a maintenance fee under 37 CFR 1.378(c) must be accompanied by (1) a statement that the delay was unintentional, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney documents must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

Joanne Burke

Petitions Examiner
Office of Petitions

cc:

Jeffrey S. Bernard Shumaker, Loop & Kendrick, LLP First Citizen Bank Plaza 128 South Tryon Street Suite 1800 Charlotte, NC 28202-5013

	SPE RESPONSE	FOR CERTIFICATE OF CORRECTION
DATE	April 19. 2011	Paper No.:
TO SPE OF SUBJECT	: ART UNIT_2484 : Request for Certificate of Corre	ection for Appl. No. <u>09/740068 patent N</u> o.:RF4 <b>10</b> 03 E
_	oond to this request for a ce	C of C mailroom date:—04-14-11 ertificate of correction within 7 days.
the IFW ap	ew the requested changes/ plication image. No new m the claims be changed.	corrections as shown in the COCIN document(s) in latter should be introduced, nor should the scope or
Please con using docu	nplete the response (see be ment code COCX.	elow) and forward the completed response to scanning
· •		
•		Magdalene Talley
<del> </del>		Certificates of Correction Branch
		571-272- 0423
Thank You	For Your Assistance	371-272-0423
The reques	st for issuing the above-id	lentified correction(s) is hereby:
X	Approved	All changes apply:
Č	Approved in Part	Specify below which changes do not apply
E	) Denied	State the reasons for denial below.
Comments		
<del>-in-</del>		
		I MEET ALRA
		Sales See 30.84
		SPE Art Unit
PTOL-306 (REV. 7/03	)	BU. U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office.



# United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

		_		
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,804	12/21/2000	Robert Curley	O-226	6420
51444 7590 09/14/2010 Kraguljac & Kalnay, LLC - Oracle 4700 Rockside Road			EXAMINER	
			NGUYEN, THANH T	
Summit One, S Independence,			ART UNIT PAPER NUMBER	
,			2444	`
			NOTIFICATION DATE	DELIVERY MODE
			09/14/2010	ELECTRONIC

## Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mary@kkpatent.com ptomail@kkpatent.com





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Kraguljac & Kalnay, LLC - Oracle 4700 ROCKSIDE ROAD SUMMIT ONE, SUITE 510 INDEPENDENCE OH 44131

In re Application of: Robert CURLEY, et al.

Application No. 09/740,804

Filed: Dec 21, 2000

For: METHOD AND APPARATUS FOR PROVIDING MEASUREMENT, AND UTILIZATION OF, NETWORK LATENCY

IN TRANSACTION-BASED PROTOCOLS

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed July 21, 2010 under 37 CFR § 1.181 to invoke Supervisory Authority and require the Examiner to withdraw the Finality of office action mailed May 18, 2010.

The petition is **GRANTED**.

## **RELEVANT PROSECUTION HISTORY**

May 20, 2004	The Examiner issued a non final rejection rejecting claims 1, 3-14, 15-27, and 29-35 under 35 U.S.C. 102(e) as being anticipated by Pruthi (PGPUB 2002/0105911). Claims 1, 15, 19, 20, 26, 27,
	28, and 29 are independent claims.
Aug 16, 2004	(copy filed with petition of Feb 18, 2005) An amendment was filed by the applicant amending independent claims 1, 15, 20, 26, 28 and 19; dependent claims were amended by virtue of their independency. Independent claims 19 and 27 remained unchanged.
	<b>G</b>
May 18, 2010	The Examiner issued an office action finally rejected claims 1, 3-14, 15-27, and 29-35 under 35 U.S.C. 103(a) as being unpatentable over Pruthi (PGPUB 2002/0105911) in view of Sweet (PGPUB 2003/0115266).
July 21, 2010	The instant petition was filed requesting withdrawing the Finality

of the action mailed May 18, 2010.

Serial No.: 09/740,804 Decision on Petition

## **REGULATIONS AND PRACTICE**

### MPEP 706.07(a) states in part that:

Under present practice, second or any subsequent action on the merits shall be made final, except where the examiner introduces a new ground of rejection not necessitated by amendment of the application by the applicant, whether or not the prior art is already of record.

## MPEP. 706.07(d) states in part that:

If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection.

Once the finality of the Office action has been withdrawn, the next Office action may be made final if the conditions set forth in MPEP § 706.07(a) are met.

### MPEP 707.07(f) states in part that:

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

### MPEP § 1201 states, in part:

The line of demarcation between appealable matters for the Board of Patent Appeals and Interferences (Board) and petitionable matters for the Director of the U.S. Patent and Trademark Office (Director) should be carefully observed. The Board will not ordinarily hear a question that should be decided by the Director on petition, and the Director will not ordinarily entertain a petition where the question presented is a matter appealable to the Board ...

### 37 C.F.R. § 1.181(f) states, in part:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings...

### **DECISION**

A review of the file history indicates in the amendment filed August 16, 204, claims 19 and 27 remained unchanged and applicant's arguments against the rejection of claims 19 and 27 as being anticipated by the Pruthi reference as follow:

Claim 19 discloses in part "using IP Header sequence number to help distinguish out-of-order TCP packets from retransmitted TCP data packets ...". The Examiner stated that Pruthi discloses the same, however, a review of Pruthi (specifically paragraph 47) reveals that Pruthi discloses receiving out-

Serial No.: 09/740,804 Decision on Petition

of-order ATM cells and orienting them into the correct order. Pruthi fails to disclose or suggest a method for determining communications protocol latency that includes distinguishing out-of-order packets from retransmitteel packets. Accordingly, claim 19 is believed allowable over Pruthi.

Claim 27 discloses a method of determining whether web page content is static or dynamic. The Examiner stated that Pruthi discloses the same at paragraphs 122 through 131. A review of Pruthi reveals that Pruthi fails to disclose or suggest the determination of whether web page content is static or dynamic. Accordingly, claim 27 is believed allowable over Pruthi.

In the Final office action of May 18, 2010, claims 19 and 27 appear to be rejected under 35 U.S.C. 103(a) as being unpatentable over Pruthi (PGPUB 2002/0105911) in view of Sweet (PGPUB 2003/0115266). No response to applicant's arguments was presented and the examiner indicated new ground of rejection was necessitated by applicant's amendment.

Thus the finality of the action mailed May 18, 2010 is improper.

For the above stated reasons, the petition is **GRANTED**.

The Finality of the Office action mailed May 18, 2010 is hereby removed and the action has been <u>changed to Non-Final</u>. The amendment filed on July 22, 2010 will be treated as a response to non final action.

Any inquiry concerning this decision should be directed to Kim Huynh, whose telephone number is (571) 272-4147.

/Nancy Le/

Nancy Le, Director Technology Center 2400 Network, Multiplexing, Cable and Information Security

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UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG WEST S. WING ENGLEWOOD CLIFFS NJ 07632-3100 MAILED
MAR 1 4 2011

OFFICE OF PETITIONS

In re Patent No. 6,562,774

Issue Date: May 13, 2003

Application No. 09/741,395

Filed: December 20, 2000

Attorney Docket No. C7541(V)

DECISION ON REQUEST FOR REFUND

This is a decision on the request filed February 15, 2011, entitled "REQUEST TO CREDIT PTO DEPOSIT ACCOUNT," which is being treated as a petition under 37 CFR 1.181(no fee), requesting refund of the maintenance fee paid on the above patent.

The request is **DISMISSED**.

Petitioner asserts that on November 19, 2010, the maintenance fee was erroneously paid to the above patent in the amount of \$2,610.00. Petitioner now files the above request for refund of the fees paid on November 19, 2010 in the above patent.

The petition states that "Applicant attempted to pay the Maintenance Fee for its U.S. Patent  $6,5\underline{7}2,774$  in the above-referenced patent on November 19, 2010, and it wasn't until they received their receipt that it was noticed that the Maintenance Fee was erroneously applied to U.S.  $6,5\underline{6}2,774$ . .... (Applicants later on the same date paid the Maintenance for the correct U.S. Patent 6,752,774)."

Petitioner is advised that 37 CFR 1.366(g) provides that maintenance fees and surcharges relating thereto will not be refunded except in accordance with 37 CFR 1.26 and 128(a). A patentee cannot obtain a refund of a maintenance fee that was due and payable on the patent. Any duplicate payment will be refunded to the fee submitter.

As the maintenance fee paid in U.S. Patent No. 6,562,774 was due and payable at the time that petitioner submitted the fee, the fee is not subject to a refund. This is not a situation wherein there has been a duplicate payment made.

Thus, in accordance with 37 CFR 1.366(g), it is not deemed appropriate to refund the maintenance fee paid in U.S. Patent No. 6,562,774.

Additionally, petitioner referenced patent number (6,752,774) in the first paragraph (last sentence) as being the correct patent. Also, on page two (2) an incorrect application number (09/816,152) was provided in the above-identified request on February 15, 2011.

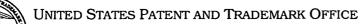
A copy of this decision is being mailed to petitioner's address indicated below.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

Cc: v

NOVAK, DRUCE & QUIGG, LLP 300 NEW JERSEY AVE., NW FIFTH FLOOR WASHINGTON, DC 20001





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DENNEMEYER & CO LTD Regent House Heaton Lane Stockport Cheshire England SK4 1BB

MAILED

OCT 112011

OFFICE OF PETITIONS

In re Patent No. 6,719,979

Issued: 12/19/2000

Application No. 09/741,744

Filed: 04/13/2004

Attorney Docket No. 4646US

**NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 23, 2011.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

Cc: TRASK, BRITT, & ROSSA

P.O. Box 2550

Salt Lake City UT 84110



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WITHROW & TERRANOVA, P.L.L.C. 100 REGENCY FOREST DRIVE SUITE 160 CARY NC 27518

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Ong

OFFICE OF PETITIONS

Application No. 09/742,683

In re Application of

**DECISION ON PETITION** 

Filed: December 19, 2000

:

Attorney Docket No. 7000-715

This is a decision on the petition under 37 CFR 1.137(b), filed April 7, 2011, to revive the above-identified application.

### The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 28, 2005, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on January 29, 2006. A Notice of Abandonment was mailed on September 7, 2006

The amendment filed April 7, 2011, is noted.

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply form the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office.

The application is being forwarded to Technology Center 2100, GAU 2155 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions



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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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CARR & FERRELL LLP 2200 GENG ROAD PALO ALTO, CA 94303 SEP 1 3 2010
OFFICE OF PETITIONS

In re Application of

Shah et al.

Application No. 09/742,699 Filed: December 20, 2000

Attorney Docket No. PA1273US

**DECISION ON PETITION** 

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 13, 2010.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Myrna M. Schelling, on behalf of the practitioners of record associated with Customer No. 22830.

Customer No. 22830, has been withdrawn as from record. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There are no outstanding Office actions that require a reply from the applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley Petitions Examiner Office of Petitions

cc:

AJIT S. SHAH

PLANETDEAL, 112 CRESCENT AVENUE

PORTOLA VALLEY, CA 94028



22830

## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE UNITED STATES DEFAUNTED TO COMMIT United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Dox 1450 Alexandria, Virginia 22313-1450 www.umpto.gov

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

09/742,699

**CARR & FERRELL LLP** 2200 GENG ROAD PALO ALTO, CA 94303 12/20/2000

Ajit S. Shah

**PA1273US** 

**CONFIRMATION NO. 9128 POWER OF ATTORNEY NOTICE** 

Date Mailed: 09/13/2010

## NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/13/2010.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/atkelley/		
•		
	•	
Office of Data Management, Application Assistance Unit (571)	272-4000 or (571) 272-4200 or	1-888-786-0101



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

J.W. Gipple GIPPLE & HALE P.O. Box 40513 Washington DC 20016

MAILED
DEC 2 0 2011
OFFICE OF PETITIONS

In re Patent No. 6,489,853

Issue Date: 12/03/2002

Application Number: 09/742958 : ON PETITION

Filing Date: 03/19/2002 :

Attorney Docket Number: X-9328 :

This is a decision on the petition under 37 CFR 1.378(c), filed on November 21, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is GRANTED.

This patent expired on December 3, 2010 for failure to timely pay the second maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address should be filed if the correspondence address needs to be updated.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

Cc: JOHN S. HALE

GIPPLE & HALE

6665-A OLD DOMINION DR

MCLEAN VA 22101



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Ewin D Schindler Five Hirsch Avenue PO Box 966 Coram NY 11727-0966

MAILED

JUL 20 2011

In re Patent No. 6,990,365

OFFICE OF PETITIONS

Issue Date: January 24, 2006 Application No. 09/743,206

Filed: March 15, 2002

ON PETITION

Title: APPARATUS FOR MEASUREMENT

OF BLOOD ANALYTES

This is a decision on the petition filed December 4, 2009, which is being treated as a request under 37 CFR 3.81(b)<sup>1</sup> to add the additional assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3215. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

The address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Charlema Grant

Attorney

Office of Petitions

Cc:

**Edwards Lifesciences Corporation** 

Legal Department One Edwards Way Irvine, California 92614

See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450

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OFFICE OF PETITIONS

ADAMS & WILKS 50 BROADWAY 31ST FLOOR NEW YORK NY 10004

In re Patent No. 6,408,460

Issue Date: June 25, 2002

Application No. 09/743291

Filed: January 8, 2001

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed September 27, 2011 with a certificate of mailing dated September 22, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified application.

## The petition is **GRANTED**.

The patent expired on June 26, 2010 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mailing date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. In appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

Anthony Knight

Director

Office of Petitions

cc: Bruce L. Adams Adams & Wilks 17 Battery Place

**Suite 1231** 

New York, NY 10004

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

# MAILED JUL 05 2011 OFFICE OF PETITIONS

GREENBLUM & BERNSTEIN PLC 1950 ROLAND CLARKE PLACE RESTON VA 20191

In re Patent No. 6,764,569
Issue Date: July 20, 2004

Application No. 09/744,149

Filed: July 3, 1999

Attorney Docket No. 225/49578

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. §1.378(b) to accept the unavoidably delayed payment of the maintenance fee, filed June 9, 2011.

The petition under 37 C.F.R. § 1.378(b) is **DISMISSED**.

### Background

The above-identified patent issued on June 20, 2004. Accordingly, the first maintenance fee could have been timely paid during the period from June 20, 2007 through December 20, 2007, or with a late payment surcharge during the period from December 21, 2007 through June 20, 2008. No maintenance fee having been received, the patent expired on June 21, 2008.

According to petitioner, there were three co-assignees of the instant application - DaimlerChrylser AG (hereinafter "Daimler"), Fraunhofer-Gesellschaft zur Forderung der angewanten Fourschung e.V. (hereinafter "Fraunhofer"), and Henkel KgaA (hereinafter "Henkel"). The three co-assignees had an agreement that while the application was pending, Daimler would be responsible for communicating with US counsel. Furthermore, after issuance, Daimler would remain responsible for tracking and paying the maintenance fees.

Petitioner states that per the USPTO's PAIR system, on October 1, 2004, Dennemeyer & Co. Luxembourg was assigned the address for fee purposes (the "fee address" is the address to which the USPTO would mail any courtesy maintenance fee reminder). In May and June of 2005, Fraunhofer purchased Daimler's and Henkel's share in the invention, becoming the sole owner of the instant patent.

After the purchase was completed, Ms. Stephanie Lindner, an employee of Fraunhofer, undertook the task of instructing annuity service company Pavis to maintain the European patents for those that were purchased. However, Lindner did not enter the due dates in Fraunhofer's internal docketing system and did not inform Pavis of the instant US patent or of the dates for maintaining the instant patent.

The expiration of the instant patent was discovered in February of 2011, due to Fraunhofer's conducting a routine check of their database.

## Relevant Statutes and Regulations

35 U.S.C. § 41(c)(1) states that:

The Commissioner may accept the delayed payment of any maintenance fee required ... after the six month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable.

37 C.F.R. § 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee must include:

- (1) The required maintenance fee set forth in \$1.20(e) through (g);
- (2) The surcharge set forth in §1.20(i)(1); and

- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.
- § 1.378(b)(3) is at issue in this case. Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. This is a very stringent standard. Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. In addition, decisions are made on a "case-by-case basis, taking all the facts and circumstances into account." <a href="Smith">Smith</a>, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." <a href="Haines">Haines</a>, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32 (N.D. Ind. 1987).

Moreover, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay.

35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish that the delay was unavoidable. Cf. Commissariat A. L'Energie Atomique v. Watson, 274 F.2d 594, 597, 124 USPQ 126, 128 (D.C. Cir. 1960)(35 U.S.C. § 133 does not require the Commissioner to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing). Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to the satisfaction of the Commissioner that the delay in payment of a maintenance fee is unavoidable. See Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d

1876 (D.D.C. 1990), aff'd 937 F.2d 623 (Fed. Cir. 1991), <u>cert.</u> <u>denied</u>, 502 U.S. 1075 (1992); <u>Ray v. Lehman</u>, 55 F. 3d 606, 608 - 609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995).

### **Analysis**

Petitioner has not demonstrated unavoidable delay within the meaning of 35 U.S.C. §41(c)(1) and 37 C.F.R. § 1.378(b).

Upon review of the petition, it is unclear what party was responsible for tracking and paying the maintenance fee in this patent. In accordance with the law, a patent will expire if the maintenance fee is not paid on time and thus no action is required on the part of the USPTO since it is patentee's burden to keep the patent in force. The maintenance fee may be accepted by the Director of the USPTO if it is shown that the delay in submission of the maintenance fee was unavoidable. In this regard, it is unclear from the record whether Daimler, Dennemeyer & Co., or Fraunhofer was responsible for tracking and paying the maintenance fee. It is required that petitioner state the name of the party responsible for tracking and paying the maintenance fee for this patent.

If Franhofer was the party responsible, it is true that the error of Lindner to enter the instant patent into their tracking system may be unavoidable delay. As set forth in MPEP 711.03(c):

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

## Conclusion

Any request for reconsideration of this decision <u>must</u> be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in \$1.17(f). <u>After decision on the petition for reconsideration</u>, no further reconsideration or

review of the matter will be undertaken by the Commissioner. Accordingly, on request for reconsideration, it is extremely important that petitioner supply **any** and **all** relevant information and documentation in order to meet his burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571)273-8300

Attn: Office of Petitions

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-3207.

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Cliff Congo Petitions Attorney Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

GREENBLUM & BERNSTEIN PLC 1950 ROLAND CLARKE PLACE RESTON VA 20191

MAILED SFP 262011 OFFICE OF PETITIONS

In re Patent No. 6,764,569 Issue Date: July 20, 2004 Application No. 09/744,149

Filed: July 3, 1999

Attorney Docket No. 225/49578

DECISION ON PETITION

This is a decision on the renewed petition under 37 C.F.R. \$1.378(b) to accept the unavoidably delayed payment of the maintenance fee, filed September 6, 2011.

The petition under 37 C.F.R. § 1.378(b) is **GRANTED**.

## Background

The above-identified patent issued on June 20, 2004. Accordingly, the first maintenance fee could have been timely paid during the period from June 20, 2007 through December 20, 2007, or with a late payment surcharge during the period from December 21, 2007 through June 20, 2008. maintenance fee having been received, the patent expired on June 21, 2008.

In a petition filed on June 9, 2011, petitioner stated that there were three co-assignees of the instant application - DaimlerChrylser AG (hereinafter "Daimler"), Fraunhofer-Gesellschaft zur Forderung der angewanten Fourschung e.V. (hereinafter "Fraunhofer"), and Henkel KgaA (hereinafter "Henkel"). The three co-assignees had an agreement that while the application was pending, Daimler would be responsible for communicating with US counsel. Furthermore, after issuance, Daimler would remain responsible for tracking and paying the maintenance fees.

Petitioner stated that per the USPTO's PAIR system, on October 1, 2004, Dennemeyer & Co. Luxembourg was assigned the address for fee purposes (the "fee address" is the address to which the USPTO would mail any courtesy maintenance fee reminder). In May and June of 2005, Fraunhofer purchased Daimler's and Henkel's share in the invention, becoming the sole owner of the instant patent.

After the purchase was completed, Ms. Stephanie Lindner, an employee of Fraunhofer, undertook the task of instructing annuity service company Pavis to maintain the European patents for those that were purchased. However, Lindner did not enter the due dates in Fraunhofer's internal docketing system and did not inform Pavis of the instant US patent or of the dates for maintaining the instant patent.

The expiration of the instant patent was discovered in February of 2011, due to Fraunhofer's conducting a routine check of their database. Patentees filed the petition to accept the unavoidably delayed payment of the maintenance fee on June 9, 2011. However, the petition was dismissed in a decision mailed on July 5, 2011. The decision pointed out that it was not clear which party was responsible for paying the maintenance fee. The decision also explained that if Fraunhofer was the responsible party, then it was true that the failure of Lindner to enter the instant patent into Fraunhofer's tracking system may constitute unavoidable delay, provided employee error per MPEP 711.03(c) was properly shown.

## Relevant Statutes and Regulations

35 U.S.C. § 41(c)(1) states that:

The Commissioner may accept the delayed payment of any maintenance fee required ... after the six month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable.

37 C.F.R. § 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee must include:

- (1) The required maintenance fee set forth in \$1.20(e)
  through (g);
- (2) The surcharge set forth in §1.20(i)(1); and
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

### Opinion:

With the instant renewed petition, petitioner has clarified that Fraunhofer was the party responsible for paying the maintenance fees. In addition, petitioner has established that: (1) Lindner's docketing error was the cause of the delay at issue; (2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and (3) Lindner was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon Lindner represented the exercise of due care.

### Conclusion:

Accordingly, it is concluded in this instance that petitioner has demonstrated that the delay in paying the 3.5 year maintenance fee was unavoidable.

The instant patent is hereby reinstated as of the mailing date of this decision.

Receipt of the \$400 fee for filing the request for reconsideration is acknowledged.

Patent No. 6,764,569

Page 3

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-3207.

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Cliff Congo Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902 MINNEAPOLIS MN 55402-0902 MAILED
OCT 06 2011
OFFICE OF PETITIONS

In re Patent No. 6,952,273

Issue Date: 10/04/2005

Application No. 09/744,161 : DECISION ON PETITION

Filed: 01/22/2001

Title: IMAGE PROCESSING APPARATUS : HAVING AN IMAGE READING UNIT AND : A PRINTING UNIT ON ONE SIDE OF A : SUBSTRATE :

This is a decision on the petition under 37 CFR 1.378(c), filed September 22, 2011, to accept the unintentionally delayed payment of the maintenance fee for the above-identified patent.

The petition is **granted**.

The patent issued October 4, 2005. The grace period for paying the maintenance fee expired on October 5, 2009.

This petition was filed timely under the provisions of 37 CFR 1.378(c) because it was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e). Accordingly, the maintenance fee in this case is accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

C. Y. Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginis 22313-1450 www.uspto.gov

APPLICATION NUMBER FILING OR 371(C) DATE FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

09/744,161

01/22/2001

Hisayoshi Fujimoto

KIX-0128-US CONFIRMATION NO. 3905

POA ACCEPTANCE LETTER

52835 HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902 MINNEAPOLIS, MN 55402-0902



Date Mailed: 10/04/2011

### NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/22/2011.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/ctdonnell/	

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902 MINNEAPOLIS MN 55402-0902

MAILED
OCT 1 2 2011
OFFICE OF PETITIONS

**DECISION ON PETITION** 

In re Patent No. 6,952,273

Issue Date: 10/04/2005

Application No. 09/744,161

Filed: 01/22/2001

Title: IMAGE PROCESSING APPARATUS HAVING AN IMAGE READING UNIT AND A PRINTING UNIT ON ONE SIDE OF A

**SUBSTRATE** 

This is a decision on the petition under 37 CFR 1.182, filed September 22, 2011, requesting issuance of duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Office of Data Management is directed to issue a duplicate Letters Patent.

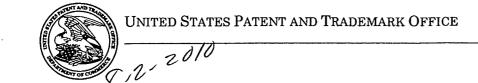
Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Ollie Person or Kimberly Terrell, Office of Data Management at (571) 272-4200.

A copy of this decision is being faxed to the Office of Data Management for issuance of a duplicate Letters Patent.

Christina Partera Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

cc: Ollie Person, 2800 S. Randolph Street, Room D-30-A (FAX 571-270-9764) Kimberly Terrell, 2800 S. Randolph Street, Room D-33 (FAX 571-270-9958)



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Patent No. : 6,516,492 B1 Ser. No. : 09/744,311

Inventor(s) : Heung-Mook Kang Issued : February 11, 2003

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing <u>incorrect or erroneous</u> assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1.17(i) (currently \$130);
- $\underline{\mathbf{B}}$ . a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- <u>C.</u> a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(703) 872-9306

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Eva James For Mary Diggs Decisions & Certificates of Correction Branch (703) 756-1583 or 1580

Michael S. Greenfield McDonnell Boehnen Hulbert & Berghoff LLP 300 South Wacker Drive, 32<sup>nd</sup> Floor Chicago, IL 60606

ej

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO IL 60604 DEC 1 9 2011
OFFICE OF PETITIONS

In re Patent No. 6,741,719

Issued: May 25, 2004

Application No.: 09/744,353

Filed: March 6, 2001

Attorney Docket No: 5167

**NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

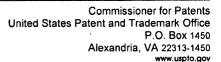
Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions



Paper No. 9

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.

1940 DUKE STREET ALEXANDRIA, VA 22314

MAILED

DEC 2 0 2010

OFFICE OF PETITIONS

In re Patent No. 6,297,407
Issue Date: 10/02/2001

Application No. 09/744,437

Filed: 01/24/2001

Title: METHOD FOR PRODUCING

ALKYNE DIOLS

**DECISION ON PETITION** 

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.378(B) TO ACCEPT AN UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN EXPIRED PATENT TO REINSTATE PATENT" filed May 24, 2010.

### The petition is **dismissed**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below because the Director will not undertaken any further reconsideration or review of the matter after a decision on the petition for reconsideration.

The patent issued on October 2, 2001. The first maintenance fee could have been paid during the period from Monday, October 4, 2004 through Monday, April 4, 2005, or with a surcharge during the period from Tuesday, April 5, 2005 through Monday, October 3, 2005. Accordingly, this patent expired on October 3, 2005, for failure to timely remit the maintenance fee.

On May 24, 2010, petitioners filed the present petition accompanied by the maintenance fee and surcharge payment and the Declaration of Dr. Anke Jacobs, Senior Patent Counsel of BASF SE.

Patent No. 6,297,407 Application No. 09/744,437

It appears that petitioners are alleging that the delay resulted from a docketing error on the part of an employee in the performance of a clerical function.

The Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. 37 CFR 1.378(a).

A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include the following:

- (1) the required maintenance fee set forth in § 1.20(e) through (g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

This petition lacks requirement (3).

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. This is a very stringent standard. Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Page 3

Patent No. 6,297,407 Application No. 09/744,437

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987). Moreover, a patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, 7 USPQ2d 1798 (Comm'r Pat. 1988).

As 35 U.S.C. 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995). That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In determining whether the delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray v. Lehman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995). The patent owner at the time of the expiration of the patent is ultimately the person responsible to ensure the timely payment of the maintenance fees. The patent owner may engage another to track and/or pay the maintenance fees; however, merely engaging another does not relieve the patent owner from his obligation to take appropriate steps to ensure the timely payment of such maintenance fees. See California Medical Prods. v. Tecnol Medical Prods., 921 F. Supp. 1219, 1259 (D. Del. 1995) The USPTO must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of an applicant, and an applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992). Specifically, delay caused by the actions or inactions of a voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. 133. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987).

The Office notes that an error in a docketing system could possibly result in a finding that a delay in payment of the maintenance fee was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that petitioner took reasonable steps to make certain that the patent was entered into the system to ensure timely payment of the maintenance fees.

Page 4

Patent No. 6,297,407 Application No. 09/744,437

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (1) the error was the cause of the delay at issue;
- (2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance;
- (3) and the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

See MPEP 711.03(c)(III)(C)(2).

An adequate showing requires:

- (A) Statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them.
- (B) Petitioners must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person responsible for the maintenance of the system. This showing must include copies of mail ledgers, docket sheets, file wrappers and such other records as may exist which would substantiate an error in docketing, and include an indication as to why the system failed to provide adequate notice that a reply was due.
- (C) Petitioners must supply information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

In his Declaration, Dr. Anke Jacobs states:

On April 23, 2010, ISENBRUCK sent an email to OBLON inquiring into the status of U.S. 6,297,407, noting that the USPTO listed the patent as expired but that BASF SE's internal records showed U.S. 6,297,407 as alive and a pending application so that no annuities have to be paid.

On April 28, 2010, OBLON informed ISENBRUCK that NOVAK had informed OBLON on March 20, 2010, that the status of U.S. 6,297,407 was "Patent Expired."

On May 5, 2010, BASF SE sent a letter to OBLON inquiring as to the possible revival of U.S. 6,297,407, and indicating that BASF SE was unaware that the electronic database had not indicated U.S. Application No 09/744,437 as a granted case in the records but

Patent No. 6,297,407 Application No. 09/744,437 Page 5

still as a pending application. Therefore the service provider was not informed to pay any maintenance fees for U.S. 6,297,407. It was only at that point that BASF SE became aware of the expiration of the above-identified patent due to failure to pay the first and second maintenance fee.

Petition dated 05/24/10, p. 2.

It does not appear that Dr. Jacobs committed the clerical error or has firsthand knowledge of the cause of the error in entering the information into the electronic database. Moreover, Dr. Jacobs did not identify the person who committed the clerical error that ultimately resulted in the failure to pay the maintenance fee in a timely manner. Dr. Jacobs did not submit information regarding the training provided to the personnel responsible for the docketing error, the degree of supervision of their work, examples of other work functions carried out, and checks on the described work that were used to assure proper execution of assigned tasks. Dr. Jacobs did not indicate whether it was reasonable to rely on those persons to perform their duties in light of their level of training and experience. Moreover, petitioners did not provide any statements from the personnel who were responsible for the docketing error or explain what steps were taken to obtain such statements. Lastly, neither Dr. Jacobs nor petitioners submitted copies of any records that may exist that would substantiate a clerical error.

In view of the above, the petition under 37 CFR 1.378(b) is dismissed.

Petitioners should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for seeking further reconsideration is not refundable. Any request for refund should be in writing to the following address:

Mail Stop 16 Director of the US Patent and Trademark Office PO Box 1450 Alexandria, VA 22313-1450

A copy of this decision should accompany any request for a refund.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

Patent No. 6,297,407 Application No. 09/744,437 Page 6

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Correspondence may also be submitted via the Electronic Filing System of the USPTO.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Partera Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

Cc:

NOVAK DRUCE DELUCA + QUIGG LLP

300 NEW JERSEY AVENUE NW

FIFTH FLOOR

**WASHINGTON DC 20001** 



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TAROLLI, SUNDHEIM, COVELL & TUMMINO, LLP 1300 EAST NINTH STREET SUITE 1700 CLEVELAND OH 44114

MAILED

DEC 06 2011

OFFICE OF PETITIONS

In re Patent No. 6,587,725

Issue Date: July 1, 2003

Application No. 09/744,640

Filed: March 26, 2001

Attorney Docket No. CWR 2 0283

**ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed October 3, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The incorrect petition form was used to petition for an unintentionally delayed payment of the maintenance, therefore the statement of unintentional delay was incorrect. Petition form PTO/SB/66 should be used. A copy of the correct petition form, PTO/SB/66 is included for your convenience.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

S.N. 09/744640 Page 2

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Terri Johnson at (703) 571-272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

Enclosed: Form PTO/SB/66, Petition to Accept the Unintentionally Delayed Payment of the Maintenance Fee



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

JAN 30 2012

TAROLLI, SUNDHEIM, COVELL & TUMMINO, LLP 1300 EAST NINTH STREET SUITE 1700 CLEVELAND OH 44114

OFFICE OF PETITIONS

In re Patent No. 6,587,725

Issue Date: July 1, 2003

Application No. 09/744,640

Filed: March 26, 2001

Attorney Docket No. CWR 2 0283

**ON PETITION** 

This is a decision on the renewed petition under 37 CFR 1.378(c), filed December 20, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 2, 2011 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

The patent file is being forwarded to Files Repository.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing I	Date ′-MM-DD)	Docket Number (if applicable)
6657602	2003-12-02	09745462	2000-1	2-26	ID 058411
of the actual U.S. a 1.366(c) and (d).					entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status.	See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CF	FR 1.27(g)	
NOT Small Entity			Small E	ntity	
Fee 3 ½ year	Code (1551)			Fee 3 ½ year	Code (2551)
● 7½ year	(1552)			7 ½ year	(2552)
11 ½ year	(1553)		0	11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) mus	t be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petitioi	n.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMEN <sup>-</sup>	T OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF T	HE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR	SIGNATO	RIES
	tates: "Any petition und fice, or by the patentee				ttorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am			
An attorney	or agent registered to	oractice before the	e Patent a	nd Tradem	ark Office
A sole pater	ntee				
A joint pater	ntee; I certify that I am	authorized to sign	this subm	nission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petitio	on		
The assigne	ee of record of the entir	e interest			

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/SMG/	Date (YYYY-MM-DD)	2011-12-27	
Name	Steven M. Gruskin	Registration Number	36818	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6657602

Issue Date:

December 2,2003

Application No. 09745462

Filed:

December 26,2000

Attorney Docket No. 024060-133

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

December 27,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

December 27,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

INNOVATION DIVISION CANTOR FITZGERLAD, L.P. 110 EAST 59<sup>TH</sup> STREET (6<sup>TH</sup> FLOOR) **NEW YORK NY 10022** 

MAILED

SEP 0 1 2010

In re Application of

OFFICE OF PETITIONS

Glenn D. Kirwin et al

**DECISION GRANTING PETITION** 

Application No. 09/745,651 Filed: December 22, 2000

: UNDER 37 CFR 1.313(c)(2)

Attorney Docket No. 99-1013

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 31, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 20, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.1

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3691 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/ Karen Creasy **Petitions Examiner** Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6850498

Issue Date:

February 1,2005

Application No. 09745767

Filed:

December 22,2000

Attorney Docket No. P129US1

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

September 30,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 30,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		Y DELAYED P ATENT (37 CF	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6850498	2005-02-01	09745767	2000-12-22	P129US1
of the actual U.S. a 1.366(c) and (d).				the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
○ 7½ year	(1552)		○ 7½ year	(2552)
	(1553)			(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES
	tates: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am		
An attorney	or agent registered to p	oractice before the	Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	pehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petitio	on	
The assigne	ee of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-29	
Name	Kendal M. Sheets	Registration Number	47077	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6431180	2002-08-13	09746275	2000-12-20	
of the actual U.S. 1.366(c) and (d).				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY    Patentee cla	aims, or has previously	claimed, small er	itity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL Et no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
<ul><li>3 ½ year</li><li>7 ½ year</li></ul>			● 7½ year	(2552)
11 ½ yea	, ,		11 ½ year	
SURCHARGE The surcharge recoff the maintenance		i)(2) (Fee Code 1	  1558) must be paid as	a condition of accepting unintentionally delayed payment
MAINTENANCE F	FEE (37 CFR 1.20(e)-(ç naintenance fee must b		this petition.	
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MAINTENANCE F The appropriate in  STATEMENT THE UNDERSIGN UNINTENTIONAL PETITIONER(S) I REINSTATED  THIS PORTION IN  37 CFR 1.378(d) and Trademark O I certify, in accord	FEE (37 CFR 1.20(e)-(gnaintenance fee must be NED CERTIFIES THAT REQUEST THAT THE MUST BE COMPLETED states: "Any petition unffice, or by the patented ance with 37 CFR 1.4(doing) or agent registered to	THE DELAY IN DELAYED PAYM DBY THE SIGNA der this section me, the assignee, o	PAYMENT OF THE MAINTI TORY OR SIGNATOR  aust be signed by an a r other party in interes	ENANCE FEE BE ACCEPTED AND THE PATENT  RIES  attorney or agent registered to practice before the Patent st."
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MAINTENANCE F The appropriate in  STATEMENT THE UNDERSIGN UNINTENTIONAL PETITIONER(S) F REINSTATED  THIS PORTION M  37 CFR 1.378(d): and Trademark O I certify, in accord  An attorney  A sole pate A joint pate	FEE (37 CFR 1.20(e)-(gnaintenance fee must be naintenance fee must be NED CERTIFIES THAT REQUEST THAT THE MUST BE COMPLETED states: "Any petition unffice, or by the patented ance with 37 CFR 1.4(do or agent registered to ontee	THE DELAY IN DELAYED PAYM DBY THE SIGNA der this section me, the assignee, o d)(4) that I am practice before the	PAYMENT OF THE MAINTI ENT OF THE MAINTI TORY OR SIGNATOR  TORY OR	ENANCE FEE BE ACCEPTED AND THE PATENT  RIES  attorney or agent registered to practice before the Patent st."

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.				
Signature	/Thomas J. Laughlin/	Date (YYYY-MM-DD)	2010-10-07	
Name	Thomas J. Laughlin			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6431180

Issue Date:

August 13,2002

Application No. 09746275

Filed:

December 20,2000

Attorney Docket No. 117645-1016

October 7,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

October 7,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7203956

Issue Date: April 10,2007

Application No. 09747365

Filed:

December 22,2000

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Attorney Docket No. 20046.0013U1

This is a decision on the electronic petition, filed

May 31,2011

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

May 31,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		LY DELAYED P ATENT (37 CFF	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7203956	2007-04-10	09747365	2000-12-22	20046.0013U1
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
X Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 CI	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee  3 ½ year	Code (2551)
3 ½ year	(1551) (1552)		7 1/ year	(2552)
7 ½ year	,		11 ½ year	(2553)
11 ½ year	r (1553)		1172904	(2000)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent it."
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am		
An attorney	or agent registered to	oractice before the	e Patent and Tradema	ark Office
A sole pater	ntee			
O A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
O A joint pater	ntee; all of whom are si	gning this e-petition	on	
The assigne	ee of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/SPW/	Date (YYYY-MM-DD)	2011-05-31	
Name	Steven P. Wigmore	Registration Number	40447	

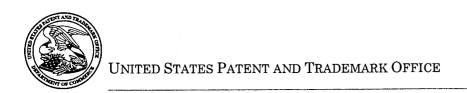
This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

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- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

# MAILED

Joseph P. Katrick, Esq. 5814 Ebenezer Road White Marsh MD 21162-1936

OCT 20 2011

OFFICE OF PETITIONS

In re Patent No. 6,601,533

Issue Date: August 5, 2003

ON PETITION

Application No: 09/747,662

Filed: December 26, 2000

This is a decision on the petition under 37 CFR 1.378(c), filed September 26, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified application.

## The petition is **DISMISSED**.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent expired on August 6, 2011 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

37 CFR 1.378 (c) requires any petition under 37 CFR 1.378 be accompanied by the surcharge set forth in 37 CFR 1.20(i)(2). Whereas the instant petition has included a surcharge of \$65, the surcharge for the instant petition is in fact \$1640. As petitioner has not supplied a deposit account number, the Office was unable to charge the \$1535 difference. As the surcharge payment is insufficient, the petition cannot be granted.

37 CFR 1.378(d) requires any petition under 37 CFR 1.378 to be signed by an attorney or agent registered to practice before the United States Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. The instant petition is apparently not signed by an appropriate party. Further, there is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this

decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

When an assignee first seeks to take action in a matter before the Office with respect to a patent application, patent, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Director. 37 CFR 3.73(b). The assignee's ownership may be established under 37 CFR 3.73(b) by submitting to the Office, in the Office file related to the matter in which action is sought to be taken:

- (A) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is, submitted for recordation pursuant to 37CFR 3.11; or
- (B) a statement specifying, by reel and frame number, where such evidence is recorded in the Office. Documents submitted to establish ownership are required to be recorded, or submitted for recordation pursuant to 37 CFR 3.11, as a condition to permitting the assignee to take action in a matter pending before the Office.

A copy of the form PTO/SB/96 for providing the statement required under 37 CFR 3.73(b) is attached.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance fee and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

# Patent No. 6,601,533

Telephone inquiries relating to this decision should be directed to Robert DeWitty (571-272-8427).

Anthony Knight

Director

Office of Petitions

Enclosure: PTO/SB/96

cc: C. Dennis Webster 1505 Camden Avenue Salisbury, MD 21801

Commissioner for Patents United States Patent and Trademark Office

MAILED O. Box 1450

MAR 12 2012

OFFICE OF PETITIONS

Joseph P. Katrick, Esq. 5814 Ebenezer Road White Marsh MD 21162-1936 PAPER NO. 22

In re Patent No. 6,601,533

Issue Date: August 5, 2003 : ON PETITION

Application No: 09/747,662 :

Filed: December 26, 2000

This is a decision on the renewed petition under 37 CFR 1.378(c), filed November 25, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified application.

# The petition is **DISMISSED**.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent expired on August 6, 2011 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

As set forth in 37 CFR 1.17(f), any petition for reconsideration of this decision must be accompanied by the petition fee of \$400. As a petition fee was not included with this renewed petition, the renewed petition will not be considered.

As noted in the previous decision mailed October 2, 2011, 37 CFR 1.378 (c) requires any petition under 37 CFR 1.378 be accompanied by the surcharge set forth in 37 CFR 1.20(i)(2). Whereas this petition includes a surcharge of \$65, the surcharge for the instant petition is in fact \$1640. As petitioner has not supplied a deposit account number, the Office was unable to charge the \$1535 difference. As the surcharge payment is insufficient, the petition cannot be granted. Additionally, any renewed petition needs to include a non-refundable petition fee of \$400. Thus, any renewed petition must be accompanied by a total fee of \$1935.

37 CFR 1.378(d) requires any petition under 37 CFR 1.378 to be signed by an attorney or agent registered to practice before the United States Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. The instant petition is apparently not signed by an appropriate party. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

When an assignee first seeks to take action in a matter before the Office with respect to a patent application, patent, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Director. 37 CFR 3.73(b). The assignee's ownership may be established under 37 CFR 3.73(b) by submitting to the Office, in the Office file related to the matter in which action is sought to be taken:

- (A) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is, submitted for recordation pursuant to 37CFR 3.11; or
- (B) a statement specifying, by reel and frame number, where such evidence is recorded in the Office. Documents submitted to establish ownership are required to be recorded, or submitted for recordation pursuant to 37 CFR 3.11, as a condition to permitting the assignee to take action in a matter pending before the Office.

It is noted that a statement under 37 CFR 3.73(b) has been submitted. However documentary evidence of a chain of title from the original owner to the assignee has not been provided.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance fee and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries relating to this decision should be directed to Robert DeWitty (571-272-8427).

Ramesh Krishnamurthy

Petitions Examiner
Office of Petitions

cc: C. Dennis Webster 1505 Camden Avenue Salisbury, MD 21801

DATE	:11-23-10	Paper No.
TO SPE OF	: ART UNIT1615	
SUBJECT	: Request for Certificate of Corre	ection for Appl. No.: <u>09/748133</u> Patent No.: <u>7803392</u>
Please respor	nd to this request for a certificate	e of correction within 7 days.
FOR IFW FIL	<u>ES</u> :	
Please review image. No ne	the requested changes/corrections with the matter should be introduced,	ons as shown in the <b>COCIN</b> document(s) in the IFW applica nor should the scope or meaning of the claims be changed.
Please complected COCX.	ete the response (see below) an	d forward the completed response to scanning using docum
FOR PAPER	FILES:	
Please review complete this	the requested changes/correctiform (see below) and forward it	ons as shown in the attached certificate of correction. Pleas with the file to:
Rande	icates of Correction Branch (C olph Square – 9D10-A Location 7580	Angela Green 703-756-1
	•	Certificates of Correction Brai
		703-756-1814
Thank You F	or Your Assistance	
<b>The request f</b> Note your deci	or issuing the above-identified ision on the appropriate box.	d correction(s) is hereby:
×	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments: _		

PTOL-306 (REV. 7/03)

SPE Art Unit
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

/Fereydoun G Sajjadi/

1617



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

# GREGORY TODD STEWART 238 16TH STREET SEAL BEACH CA 90740

MAILED

OCT 06 2011

In re Patent No. 6,484,661 : Issued: November 26, 2002 :

OFFICE OF PETITIONS

Application No. 09/749,070

**ON PETITION** 

Filed: December 27, 2000

Attorney Docket No. none

This is a decision on the petition under 37 CFR 1.137(b), filed August 22, 2011, which will be treated as a petition under 37 CFR 1.378(c) to accept the delayed payment of a maintenance fee for the above-identified patent.

## The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) listed above.

With regards to item (1), the petition must be signed by:

1) An attorney or agent of record appointed in compliance with § 1.34(b);

2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest:

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or

(5) All of the applicants (§§ 1.42.1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

The instant petition was signed by Louis Solis, who appears to have 50% interest of ownership in the above-identified patent. Where at least one inventor retains an ownership interest together

Patent No. 6,484,661

Page 2 with the partial assignee(s), the combination of all partial assignees and inventors retaining

ownership interest is required.

Therefore, petitioner has submitted a petition under 37 CFR 1.378(c), wherein the petition as signed cannot be accepted since Louis Solis is not authorized to sign the instant petition. Further, petitioner has not established that the person who signed the petition form is authorized to sign on behalf of the patentee(s), assignee, or other party of interest. Consequently, the petition under 37 CFR 1.378(c), cannot be accepted at this time. A renewed petition with the proper signature as listed above is required.

Further, if the instant petition is on the behalf of the assignee, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed.

Currently, there is no Statement under 37 CFR 3.73(b) of record in the above-identified patent for all assignees. Form PTO/SB/96 is enclosed.

A courtesy copy of this decision is being mailed to the address on the petition; however, all future correspondence will be mailed solely to the address of record.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By hand: U.S. Patent ar

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571)-272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

Attachment: PTO/SB/96

cc: Louis Solis 2241 Oak Street

Santa Ana, CA 92707



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

GREGORY TODD STEWART 238 16TH STREET SEAL BEACH CA 90740

MAILED

NOV 28 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,484,661

Issued: November 26, 2002

Application No. 09/749,070

Filed: December 27, 2000

Attorney Docket No. none

**ON PETITION** 

## REQUIREMENT FOR INFORMATION

A renewed petition was filed on October 28, 2011 under 37 CFR 1.378 to accept the delayed payment of a maintenance fee for the above-identified patent.

A decision on this petition will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit petitioner to address the following issues before a decision is rendered. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).

[ ]

The instant petition is not signed by a person authorized to sign a petition under 37 CFR 1.378 in the above-identified patent. 37 CFR 1.378(d) requires that any petition under 37 CFR 1.378 be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

[X]

The instant petition appears to be on behalf of the inventor and the assignee of 50% interest; however, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed with this requirement for information.

Petitioner has submitted a renewed petition under 37 CFR 1.378(c), however, the petition as signed cannot be accepted since currently Louis Solis is not authorized to sign the instant petition. Further, petitioner has not established that the person who signed the petition form is authorized to sign on behalf of the patentee(s), assignee, or other party of interest. Consequently, the petition under 37 CFR 1.378(c), cannot be accepted at this time.

The response to this Requirement for Information should include a cover letter entitled "Response to Requirement for Information."

At the end of the two month period specified above, a decision will be rendered on the instant petition under 37 CFR 1.378 as supplemented by any information submitted in response to this Requirement for Information.

In order to expedite reinstatement of this patent, petitioner may wish to consider submitting the reply to the requirement for information by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

A courtesy copy of this decision is being mailed to the address on the petition; however, all future correspondence will be mailed solely to the address of record.

By Mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571)-272-7751.

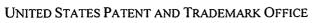
/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

Enclosure: PTO/SB/96 – Statement under 37 CFR 3.73(b)

cc: L

Louis Solis 2241 Oak Street

Santa Ana, Calif. 92707





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN VA 22102 MAILED
MAR 282011
OFFICE OF PETITIONS

In re Patent No.

6,463,803

Application No. 09/749,693

Filing Date: December 28, 2000

Issue Date: October 15, 2002

Attorney Docket No. PM 275339 ND-A050-:

US5DIV#

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed January 28, 2011, requesting withdrawal of a terminal disclaimer filed in the above-cited application and replacement with a corrected terminal disclaimer.

### The petition is dismissed.

A review of the application file history reveals that a terminal disclaimer was filed on August 20, 2001, in the above-cited application wherein applicants disclaimed the terminal part of any patent granted on this application which would extend beyond the expiration date of United States Patent No. 5,416,916. The terminal disclaimer was accepted and made of record. Patentees now file the instant petition requesting that the terminal disclaimer filed August 20, 2001, be withdrawn because of a typographical error in the application number that was being disclaimed. The terminal disclaimer cited U.S. Patent No. 5,416,916 when it should have cited United States Patent No. 5,461,916. Patentees request that the incorrect terminal disclaimer be withdrawn and that the corrected terminal disclaimer, filed herewith, be made of record.

It is noted that Section 1490(VII) (B) of the <u>Manual of Patent Examining Procedure</u> (MPEP) states, in pertinent part, that:

The mechanisms to correct a patent — Certificate of Correction (35 U.S.C. 255), reissue (35 U.S.C. 251), and reexamination (35 U.S.C. 305) — are not available to withdraw or otherwise nullify the effect of a recorded terminal disclaimer. As a general principle, public policy does not favor the restoration to the patent owner of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner — e.g., intervening rights in the case of a reissue patent. See, e.g., Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935).

Where a terminal disclaimer was submitted to overcome a nonstatutory double patenting rejection (made during prosecution of an application which has now issued as a patent), and the numbers for the patent being disclaimed in the terminal disclaimer were inadvertently transposed (e.g., 6,444,316 written as 6,444,136), a petition under 37

CFR 1.182 may be filed to withdraw the terminal disclaimer with the incorrect (transposed) patent number (recorded in the issued patent), and replace it with a corrected terminal disclaimer having the correct patent number. In this instance, the inadvertency is clear from the record. If the transposing error resulted in an earlier patent term expiration date than provided by the corrected terminal disclaimer, a statement must be included in the corrected terminal disclaimer to retain that earlier expiration date. The absence of such a statement will result in the Office declining to exercise its discretion to grant relief.

Based on the above-cited section of the MPEP, it is not appropriate to grant the instant petition because the corrected terminal disclaimer did not contain a statement retaining any earlier expiration date. It is noted that petitioner states:

[a]pplicants also respectfully assert that the earlier patent term period based on the incorrect patent should not be retained since the initial error occurred with the Examiner and not the Applicant. Applicants respectfully assert that the patent term be based on patent 5,461,916.

Excerpt taken from "Petition under 37 CFR 1.182 to Withdraw the Terminal Disclaimer with the Incorrect (Transposed) Patent Number, and Replace it With a Corrected Terminal Disclaimer Having the Correct Patent Number, filed January 28, 2011, pg.4.

A review of the relevant patent histories reveals that U.S. Patent No. 5,416,916, which was cited in the terminal disclaimer filed August 20, 2001, has an earlier expiration date than U.S. Patent No 5,461,916, which is cited in the terminal disclaimer filed January 28, 2011. In such an instance, petitioner is required to make a statement in the "corrected" terminal disclaimer retaining the earlier expiration date. This is true notwithstanding the reason the patent numbers were transposed. The petition must be dismissed because the terminal disclaimer filed January 28, 2011, was not accompanied by a statement retaining the earlier expiration date.

Any renewed petition may directed to the following:

By mail:

Mail Stop Petitions Commissioner for Patents P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

Questions regarding this decision may be directed to the undersigned at (571)272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN VA 22102 MAILED
AUG 0 2 2011
OFFICE OF PETITIONS

In re Patent No. 6,463,803

Issue Date: October 15, 2002

Application No. 09/749,693 Filed: December 28, 2000

Attorney Docket No. PM 275339 ND-A050-

US5DIV#

DECISION ON PETITION .

This is a decision on the renewed petition filed June 20, 2011, requesting withdrawal of a terminal disclaimer filed in the above-identified application and replacement with a corrected terminal disclaimer.

### The petition is dismissed.

A review of the application file history reveals that a terminal disclaimer was filed August 20, 2011, in the above-cited application wherein applicants disclaimed the terminal part of any patent granted on this application which would extend beyond the expiration date of United States Patent No. 5, 416,916. The terminal disclaimer was accepted and made of record. Patentees now file the instant petition requesting that the terminal disclaimer filed August 20, 2001, be withdrawn because of a typographical error in the patent number that was being disclaimed. The terminal disclaimer cited U.S. Patent No. 5,416,916 when it should have cited United States Patent No. 4,461,916. Patentees request that the incorrect terminal disclaimer be withdrawn and that corrected terminal disclaimer, filed June 20, 2011, be made of record.

It is noted that Section 1490(VII)(B) of the Manual of Patent Examining Procedure (MPEP) states, in pertinent part, that:

The mechanisms to correct a patent - Certificate of Correction (35 U.S.C. 255), reissue (35 U.S.C. 251); and reexamination (35 U.S.C. 305) - are not available to withdraw or otherwise nullify the effect of a recorded terminal disclaimer. As a general principle, public policy does not favor the restoration to the patent owner of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner - e.g., intervening rights in the case of a reissue patent. See, e.g., Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPO 308 (1935).

Where a terminal disclaimer was submitted to overcome a nonstatutory double patenting rejection (made during prosecution of an application which has now issued as a patent), and the numbers for the patent being disclaimed in the terminal disclaimer were inadvertently transposed (e.g., 6,444,316 written as 6,444,136), a petition under 37 CFR 1.182 may be filed to withdraw the terminal disclaimer with the incorrect (transposed) patent number (recorded in the issued patent), and replace it with a corrected terminal disclaimer having the correct patent number. In this instance, the inadvertency is clear from the record. If the transposing error resulted in an earlier patent term expiration date than provided by the corrected terminal disclaimer, a statement must be included in the corrected terminal disclaimer to retain that earlier expiration date. The absence of such a statement will result in the Office declining to exercise its discretion to grant relief.

Based on the above-cited section of the MPEP, it is appropriate to grant the instant petition because: 1) the terminal disclaimer was submitted to overcome a non-statutory double patenting rejection; 2) the numbers for the patent being disclaimed in the terminal disclaimer were inadvertently transposed, and 3) a statement is included in the corrected terminal disclaimer to retain the earlier expiration date.

The petition must be dismissed, however, because the corrected terminal disclaimer is not signed by an appropriate party pursuant to 37 CFR 1.321, which states, in pertinent part:

- (b) An applicant or assignee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of a patent to be granted. Such terminal disclaimer is binding upon the grantee and its successors or assigns. The terminal disclaimer, to be recorded in the Patent and Trademark Office, must:
  - (1) be signed:
    - (i) by the applicant, or
    - (ii) if there is an assignee of record of an undivided part interest, by the applicant and such assignee, or
    - (iii) if there is an assignee of record of the entire interest, by such assignee, or
    - (iv) by an attorney or agent of record;
  - (2) specify the portion of the term of the patent being disclaimed;
  - (3) state the present extent of applicant's or assignee's ownership interest in the patent to be granted; and
  - (4) be accompanied by the fee set forth in § 1.20(d).
- (c) A terminal disclaimer, when filed to obviate judicially created double patenting in a patent application or in a reexamination proceeding except as provided for in paragraph (d) of this section, must:
  - (1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;
- (2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application or in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and
- (3) Include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the judicially created double patenting.

The terminal disclaimer filed June 20, 2011, is signed by Michael J. Schmidt, who is a registered agent, but it is not noted in USPTO records as being the attorney or agent of record in this matter. The renewed petition should be accompanied by either a document granting power of attorney to Mr. Schmidt, or a terminal disclaimer that is signed by one of parties provided in 37 CFR 1.321(b) above.

A copy of this decision is being sent to the address cited on the petition, however, all future correspondence will be mailed solely to the address of record until appropriate written instructions to the contrary are received.

Questions regarding this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

cc:

Michael J. Schmidt Harness, Dickey & Pierce, P.L.C. PO Box 828 Bloomfield Hills, Michigan 48303



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Harness, Dickey & Pierce, P.L.C PO Box 828 Bloomfield Hills, Michigan 48303 MAILED

SEP 19 2011

OFFICE OF PETITIONS

**DECISION GRANTING PETITION** 

In re Patent No.

6,463,803

Application No. 09/749,693

Filing Date: December 28, 2000

Issue Date: October 15, 2002

Attorney Docket No. PM 275339 ND-A050-US5DIV#

This is a decision on the renewed petition under 37 CFR 1.182, filed September 1, 2011, requesting withdrawal of a terminal disclaimer filed in the above-cited application and replacement with a corrected terminal disclaimer.

#### The petition is granted.

A review of the application file history reveals that a terminal disclaimer was filed August 20, 2011, in the above-cited application wherein applicants disclaimed the terminal part of any patent granted on this application which would extend beyond the expiration date of United States Patent No. 5, 416,916. The terminal disclaimer was accepted and made of record. Patentees now file the instant petition requesting that the terminal disclaimer filed August 20, 2001, be withdrawn because of a typographical error in the patent number that was being disclaimed. The terminal disclaimer cited U.S. Patent No. 5,416,916 when it should have cited United States Patent No. 4,461,916. Patentees request that the incorrect terminal disclaimer be withdrawn and that corrected terminal disclaimer, filed September 1, 2011, be made of record.

It is noted that Section 1490(VII) (B) of the <u>Manual of Patent Examining Procedure</u> (MPEP) states, in pertinent part, that:

The mechanisms to correct a patent — Certificate of Correction (35 U.S.C. 255), reissue (35 U.S.C. 251), and reexamination (35 U.S.C. 305) — are not available to withdraw or otherwise nullify the effect of a recorded terminal disclaimer. As a general principle, public policy does not favor the restoration to the patent owner of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner — e.g., intervening rights in the case of a reissue patent. See, e.g., Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935).

Where a terminal disclaimer was submitted to overcome a nonstatutory double patenting rejection (made during prosecution of an application which has now issued as a patent), and the numbers for the patent being disclaimed in the terminal disclaimer were inadvertently transposed (e.g., 6,444,316 written as 6,444,136), a petition under 37 CFR 1.182 may be filed to withdraw the terminal disclaimer with the incorrect (transposed) patent number (recorded in the issued patent), and replace it with a corrected terminal disclaimer having the correct patent number. In this instance, the inadvertency is clear from the record. If the transposing error resulted in an earlier patent term expiration date than provided by the corrected terminal disclaimer, a statement must be included in the corrected terminal disclaimer to retain that earlier expiration date. The absence of such a statement will result in the Office declining to exercise its discretion to grant relief.

Based on the above-cited section of the MPEP, it is appropriate to grant the instant petition because: 1) the incorrect terminal disclaimer was submitted to overcome a nonstautory double patenting rejection; 2) the numbers for the patent being disclaimed in the terminal disclaimer were inadvertently transposed; 3) the corrected terminal disclaimer was filed with the instant petition, and 4) the corrected terminal disclaimer contained a statement retaining any earlier expiration date. The petition is granted, accordingly.

The Revocation of Power of Attorney with new Power of Attorney and Change of Correspondence Address, filed September 1, 2011, is noted.

The file is being directed to Technology Center 2800, GAU 2856 where the corrected terminal disclaimer filed September 1, 2011, will be made of record.

Questions regarding this decision may be directed to the undersigned at (571)272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin .
Petitions Attorney
Office of Petitions

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6657405	2003-12-02	09750054	2000-12-29	YANG3049	
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY					
	ims, or has previously		ty status. See 37 CF	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)		
NOT Small Entity			Small Entity		
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)	
7 ½ year	(1552)		7 ½ year	(2552)	
11 ½ year			O 11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment	
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.					
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL					
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED					
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES	
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office					
A sole patentee					
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.					
A joint patentee; all of whom are signing this e-petition					
The assignee of record of the entire interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Thomas J. Moore, Reg.# 28974/	Date (YYYY-MM-DD)	2012-02-21		
Name	Thomas J. Moore	Registration Number	28974		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6657405

Issue Date:

December 2,2003

Application No. 09750054

Filed:

Attorney Docket No. EM/YANG/6365

December 29,2000

February 21,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 21,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.





COMMISSIONER FOR PATENTS UNITED STATES PATENT AND TRADEMARK OFFICE P.O. Box 1450 ALEXANDRIA, VA 22313-1450

FOLEY & LARDNER LLP 3000 K ST. NW SUITE 500 WASHINGTON DC 20007

# MAILED NOV 08 2010

OFFICE OF PETITIONS

In re Patent No. 7186495

: DECISION ON REQUEST

Maeda et al.

: FOR

Issue Date: 03/06/2007

: RECONSIDERATION OF

Application No. 09/750116

: PATENT TERM ADJUSTMENT

Filed: 12/29/2000

Atty Docket No.

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION NEC99P156-MS

This is a decision on the petition filed on RESPONSE TO JUNE 2010 DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed on July 6, 2010, which is being treated as a request for reconsideration under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred eleven days (1411) days. For the reasons stated below, the petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by one thousand two hundred sixty (1260) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred sixty (1260) days is **GRANTED** to the extent indicated.

Patentee asserts that the 204 day period of reduction for applicant delay should be removed. Specifically, patentee notes that the decision mailed on January 23, 2007 stated that this period of delay was in error and should be removed. As such, patentee is correct, and the 204 day period of applicant delay will be removed.

Patentees again argue that a 1075 period starting on the day after the date four months from the date of filing a reply on March 31, 2003, to the mailing of the notice of allowance on July 10, 2006, should be entered. Specifically, petitioners state that the Letter Regarding Suspension mailed on June 20, 2003, is not an action under 35 USC 132 pursuant to 37 CFR 1.703(a)(3) in that it does not constitute a rejection, objection, or requirement, and did not set a time for prosecuting the application under 35 USC 133.

Patentees' contentions have been considered, but their arguments in support thereof have not been found persuasive.

35 USC 154(b)(1)(A)(ii) provides:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to —

. . *.* 

(ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken;

Accordingly, 37 CFR 1.702(a)(2) states, in pertinent part:

- (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
- (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

In this instance, there was no examination delay within the meaning of 35 USC 154(b)(1)(A)(ii) and 37 CFR 1.702(a)(2). The reply under 35 U.S.C. 132 was filed on March 31, 2003. The Letter Regarding Suspension mailed June 20, 2003, was mailed in response to and within four months of, the filing of the reply. Further, a review of the Letter Regarding Suspension makes clear that it is an Office action prepared by the examiner as a result of the examination conducted pursuant to 35 U.S.C. 131. For example, therein the amendment was entered and patentees were advised as all claims were allowable. The Letter Regarding Suspension is a notification under 132 and properly stops the clock for determining examination delay pursuant to 37 CFR 1.702(a)(2).

The patent term adjustment at the time of issuance of the patent is 1260 days (421 (160 + 237 + 24) days of Office delay + 1163 days of over three years delay – 1019 (653 + 105 + 237 + 24) overlapping days + 758 (654 + 105 -1 overlap) days of delay due to interference proceedings – 63 (27 + 36) days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one** (1) **month or thirty** (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred sixty** (1260) days.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Anthony Knight

Director

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

**PATENT** 

: 7,186,495 B2

DATED

Mar. 6, 2007

**DRAFT** 

INVENTOR(S): Maeda et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [\*] Notice: under 35 USC 154(b) by 499 days.

Delete the phrase "by 499 days" and insert – by 1260 days--

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6517877	2003-02-11	09750343	2000-12-29	048262-000001	
				nitify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)		
NOT Small Entity			Small Entity		
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)	
● 7 ½ year	(1552)		○ 7½ year	(2552)	
11 ½ year	r (1553)		11 ½ year	(2553)	
of the maintenance	e fee.		558) must be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES	
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office					
A sole patentee					
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.					
A joint patentee; all of whom are signing this e-petition					
The assignee of record of the entire interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/David S. Resnick/	Date (YYYY-MM-DD)	2011-09-06		
Name	David S. Resnick	Registration Number	34235		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6517877

February 11,2003

Application No. 09750343

Filed:

Issue Date:

December 29,2000

Attorney Docket No. 1817-0104P

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

September 6,2011 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 6,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road Weston MA 02493

MAILED

OCT 1 9 2010

OFFICE OF PETITIONS

In re Application of Mitchell R. Swartz

Application No. 09/750,480

Filed: December 28, 2000

ON PETITION

Attorney Docket No.

This is in response to the petition under 37 CFR 1.181, filed September 13, 2006, , which is being treated as a petition to withdraw the holding of abandonment of the above identified application.

## The petition is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." See 37 CFR 1.181(f).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2005. The reply to a final Office action must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

A petition under 37 CFR 1.181 was filed on April 8, 2005. This petition was denied by the Technology Center 3600 Director on May 10, 2005. This petition was the only response filed by applicant during the response time set in the final Office action.

A Notice of Abandonment was mailed September 5, 2006 which noted that no response had been received in reply to the Office letter mailed on "06 July 2005".

Petitioner argues that the abandonment was improper since he had never received an Office letter mailed July 6, 2005. A review of the file shows that, as indicated by petitioner, there is no Office letter or any other Office communication mailed on July 6, 2005.

However, petitioner's argument is not convincing of improper abandonment. Abandonment is a fact of law. The final Office action mailed January 11, 2005 was not properly responded to in a timely manner by applicant.

#### 37 CFR 1.135 states:

# § 1.135 Abandonment for failure to reply within time period.

- (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
- (c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

Applicant failed to properly reply and thus the application was appropriately abandoned. The May 8, 2005 petition to the Technology Center 3600 Director was not an acceptable response to the final Office action since it was denied and thus the final Office action remained in effect.

A Notice of Abandonment (PTOL 1432) is a courtesy letter which informs applicant of the abandoned status of his application. While it is unfortunate that the examiner inserted an incorrect date for the final Office action on this form, the Notice was correct in indicating that the application was abandoned for failure to reply to an Office letter. In any event, this is a moot issue as this notice is not sent out until after an application is determined to be in abandoned status. The notice itself has no bearing on abandonment of an application.

Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

#### **ALTERNATIVE VENUE**

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).

- (2) The petition fee as set forth in 37 CFR 1.17(m), \$810.00 for a small entity;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: M

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-6842.

Carl Friedman

**Petitions Examiner** 

Office of Petitions

#### UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

# MAILED

Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road Weston MA 02493

DEC 06 2010

OFFICE OF PETITIONS

In re Application of Mitchell R. Swartz

Application No. 09/750,480

Filed: December 28, 2000

For: METHOD AND APPARATUS TO MONITOR LOADING USING VIBRATION

**ON PETITION** 

This is a decision on the renewed petition under 37 CFR 1.181 filed November 1, 2010, to revive the above-identified application.

The petition is **DENIED**.<sup>1</sup>

#### BACKGROUND

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2005. The reply to a final Office action must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

No reply was timely received in the above identified application and the application went abandoned on April 12, 2005. A Notice of Abandonment was mailed September 5, 2006.

A petition under 37 CFR 1.181 was filed September 13, 2006. It was treated as a petition to withdraw the holding of abandonment and was dismissed in a decision mailed October 19, 2010.

The instant renewed petition was filed November 1, 2010.

This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02.

It is noted in this renewed petition, at paragraph 9, that petitioner states "Nowhere is there any mention of the fact that the purpose of the Petition was to remove abandonment like the erroneous, flawed 'decision' purports." This statement is at odds with the petition filed September 13, 2006 which indicates in the first paragraph that the petition is filed with respect to the Office communication mailed September 5, 2006 which was a Notice of Abandonment. Since the petition was filed in regards to a Notice of Abandonment, the petitioner can only be considered as a request to withdraw the holding of abandonment under 37 CFR 1.181.

#### STATUTE AND REGULATION

#### § 1.135 Abandonment for failure to reply within time period.

- (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
- (c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

### § 1.113 Final rejection or action.

- (a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.
- (b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

MPEP 714.13(II) in part:

Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to:

- (A) an amendment complying with 37 CFR 1.116;
- (B) a Notice of Appeal (and appeal fee); or
- (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply requirement of 37 CFR 1.111) and the fee set forth in 37 CFR 1.17(e).

#### **OPINION**

The petition decision mailed October 19, 2010, noted that applicant had failed to timely respond to the final Office action mailed January 11, 2005. Petitioner points out that a "response" was filed in the form of continuation '677 on April 6, 2005. A review of Office records shows that continuation application No. 11/099,677 was filed April 6, 2005 (a continuation of that application was filed as application No. 12/589,258 on October 20, 2009). Petitioner indicates that he never abandoned the application due to the filing of the continuation application.

It appears petitioner is confusing abandonment of an **application** with abandonment of an **invention**. When petitioner failed to file a proper response to the final Office action, he allowed the application to go abandoned. By timely filing a continuation application he was in effect not abandoning his invention. The filing of a continuation application has no effect on prosecution of the instant application. Therefore, the filing of a petition to withdraw the holding of abandonment in this application based on the fact that a continuation application was filed cannot be granted.

As petitioner has failed, despite repeated attempts, to provide any persuasive arguments meriting withdrawal of the holding of abandonment, the petition must be <u>denied</u>.

### **CONCLUSION**

The prior decision, which refused to withdraw the holding of abandonment, has been reconsidered, and is affirmed.

Petitioner is not precluded from filing a petition to revive pursuant to 37 CFR 1.137. However, continued delay in filing such a petition, after this final agency action, may be determined to be intentional delay and may preclude revival of the application.

Finally, if petitioner wants a copy of the file history, it may be viewed by accessing Private PAIR. Instructions for setting up an account may be found at the following link:

http://www.uspto.gov/patents/process/status/private\_pair/PrivPairOverview\_Oct09.pdf

If you have any questions about setting up an account, you can contact the Electronic Business Center at 1-866-217-9197 or via email at <u>EBC@uspto.gov</u>.

Telephone inquiries related to this decision should be directed to Carl Friedman at 571-272-6842.

Anthopy Knight

Director, Office of Petitions

#### UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road Weston MA 02493

MAILED

JAN 27 2012

In re Application of : OFFICE OF PETITIONS

Mitchell'R. Swartz :

Application No. 09/750,480 : ON PETITION

Filed: December 28, 2000

Attorney Docket No.

This is a decision on the petition filed October 7, 2011 and again on October 11, 2011, requesting that the Director of the USPTO review the Office of Petitions decision dated December 6, 2011 denying the Petition under 37 CFR 1.181 to revive the above identified application.

## The petition is **DENIED**.

The issue of reviving the above identified application was fully and finally treated in the decision of December 6, 2010. The decision clearly stated that it was a final agency decision within the meaning of 5 USC 704 which states:

#### § Section 704. - Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority

Therefore, the instant petition will not be considered on the merits and is **denied**.

Andrew Hirshfeld

Associate Commissioner

For Patent Examination Policy

#### UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MARVIN E. JACOBS KOPPEL & JACOBS SUITE 215 2151 ALESSANDRO DRIVE VENTURA CA 93001

MAILED

NOV 22 2011

OFFICE OF PETITIONS

In re Patent No. 6,494,458

Issued: December 17, 2002

Application No. 09/750,623 : ON PETITION

Filed: December 19, 2000

Attorney Docket No. 860-20-009

This is a decision on the petition under 37 CFR 1.378(c), filed August 1, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

#### The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) listed above.

With regards to item (1), the petition must be signed by:

1) An attorney or agent of record appointed in compliance with § 1.34(b);

2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or

(5) All of the applicants (§§ 1.42.1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73. (Form PTO/SB/96 enclosed)

Petitioner has submitted a petition under 37 CFR 1.378(c), however, the petition as signed cannot be accepted since Sarah Lee Ling Uth is not authorized to sign the instant petition. Further, petitioner has not established that the person who signed the petition form is authorized to sign on behalf of the patentee(s), assignee, or other party of interest. Consequently, the petition under 37 CFR 1.378(c), cannot be accepted at this time. A renewed petition with the proper signature as listed above is required.

Further, if the instant petition is on the behalf of the assignee, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed.

Currently, there is no Statement under 37 CFR 3.73(b) of record in the above-identified patent.

A courtesy copy of this decision is being mailed to the address on the petition; however, all future correspondence will be mailed solely to the address of record.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By hand:

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571)-272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

Enclosure: form PTO/SB/96

cc:

Sarah Lee Ling Uth 2205 Radcourt Dr.

Hacienda Heights, CA 91795

### UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Marvin E. Jacobs KOPPEL & JACOBS Suite 215 2151 Alessandro Drive Ventura CA 93001

MAILED

NOV 212011

**OFFICE OF PETITIONS** 

In re Patent No. 6,494,460

Issue Date: December 17, 2002

Application No. 09/750,624 : ON PETITION

Filed: December 26, 2000

Attorney Docket No. **860-20-008** 

This is a decision on the petition under 37 CFR 1.378(c), filed August 1, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

This patent expired at midnight December 17, 2010, for failure to pay the  $7\frac{1}{2}$  year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

#### The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

- (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under §3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Sarah Lee Ling Uth) was ever given a power of attorney to act on behalf of inventor Karl E. Uth, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

In sum, petitioner must submit a petition signed by all the inventors, unless petitioner herein is the assignee of the entire right, tile and interest in the instant patent application, then compliance with 37 CFR 3.73(b) must be satisfied. A blank certificate under 37 CFR 3.73(b) form (PTO/SB/96) is enclosed with this decision for petitioner's convenience.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-4584.

oA)ne Burke

Petitions Examiner
Office of Petitions

Enclosed: Blank Statement Under 37 CFR 3.73(b) form (PTO/SB/96)

cc:

Sarah Lee Ling Uth 2205 Radcourt Dr.

Hacienda Heights, CA 91745

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)					
Applicant/Patent Owner:					
Application No./Patent No.: Filed/Issue Date:					
Titled:					
·					
	, a				
(Name of Assignee)		Assignee, e.g., corporation, partne	rship, university, government agency, etc.		
states that it is:					
1. the assignee of the entire right, title, an	d interest in;				
2. an assignee of less than the entire right (The extent (by percentage) of its owner.					
3. the assignee of an undivided interest in	the entirety of (a co	mplete assignment from o	ne of the joint inventors was made)		
the patent application/patent identified above, by vi	irtue of either:				
A. An assignment from the inventor(s) of the United States Patent and Trademar copy therefore is attached.					
OR					
B. A chain of title from the inventor(s), of the	he patent application				
1. From:		To:			
The document was recorded					
Reel	, Frame	, or for whic	ch a copy thereof is attached.		
2. From:	,	То:			
The document was recorded	in the United States	<del></del>			
			ch a copy thereof is attached.		
3. From:		To:			
:					
The document was recorded  Reel					
Nee!	, Frame	, OF IOI WINC	th a copy thereof is attached.		
Additional documents in the chain of ti	itle are listed on a su	pplemental sheet(s).			
As required by 37 CFR 3.73(b)(1)(i), the do or concurrently is being, submitted for record			he original owner to the assignee was,		
[NOTE: A separate copy (i.e., a true copy of accordance with 37 CFR Part 3, to record the					
The undersigned (whose title is supplied below) is	authorized to act on	behalf of the assignee.			
Signature	<u>.</u>		Date		
Drinted on Torond Name			Title		
Printed or Typed Name	•		Title		

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

#### **Privacy Act Statement**

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



# United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/750,765	12/28/2000	Mitchell R. Swartz		8044	
	7590 03/12/2012 artz ScD FF MD		EXAM	IINER	
Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road			PALABRICA, RICARDO J		
Weston, MA 02	2493	•	ART UNIT PAPER NUMBER		
			3663		
			MAIL DATE	DELIVERY MODE	
			03/12/2012	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



### UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE WASHINGTON, DC 2023

MAR 1 3 2012

Mitchell R. Swartz ScD, MD, EE 16 Pembroke Road Weston, MA 02493

In re:

Mitchell R. Swartz

: DECISION ON PETITION

Serial No.

09/750,765

: UNDER 37 CFR 1.181

Filed:

December 26, 2000

For:

METHOD AND APPARTUS TO

CONTROL ISOTOPIC FUEL LOADED WITHIN A MATERIAL

This is a decision on the petitions filed June 15, 2006, October 17, 2001 and October 21, 2011 under 37 CFR 1.181 requesting the withdrawal of the examiner's holding that the appeal brief is defective dated December 30, 2003 and March 31, 2004 and forward the appeal brief of January 7, 2004 to the Board of Patent and Interferences.

The petition is GRANTED to the extent indicated below.

From the filing of the first appeal brief on October 28, 2003, the examiner required strict compliance with the requirements of paragraphs (c) of 37 CFR 1.192. Rule 37 CRF 1.192, however, provided in July of 2003¹ that: "The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner." See 37 CFR 1.192(c) (emphasis added). The appeal brief in this application was filed by a pro se applicant, there is no requirement that the appeal brief of October 28, 2003 or the subsequent appeal brief of January 7, 2004 strictly comply with the requirements of 37 CFR 1.192(c). Accordingly, the notices holding the appeal brief filed September 23, 2003 non-compliant, and the decision to dismiss the appeal and hold the application abandoned for failure to timely file a compliant appeal brief are withdrawn. In addition, the abandonment is vacated.

This decision is based solely upon the provision in former 37 CFR 1.192(c) which excluded its application to an appeal brief filed by an appellant who is not represented by a registered practitioner. Nothing in this decision should be taken as an indication that the appeal briefs filed in this application comply with the requirements of 37 CFR 1.192(c) (or current 37 CFR 41.37(c)) or that there is any merit to the myriad of contentions presented in the petitions filed in this application. Petitioner is also advised that this decision does not preclude the Board of Patent Appeals and Interferences from treating the appeal briefs filed in this application in any manner it deems appropriate.

Accordingly, the abandonment is vacated and the application is being forwarded to the examiner for consideration of the appeal brief filed January 7, 2004.

Any questions or comments with respect to this decision should be forwarded to Office of Petitions in writing. If applicant wishes to have this matter be decided at a higher authority, an explicit request that "A review of the Technology Center's decision be made by the Director of the USPTO" should be included with any future petition subsequent to a decision denying an earlier petition.

Any questions or comments with respect to this decision should be forwarded to SPE Jack W. Keith at (571) 272-6878.

Cathy Marecki, Director

Patent Technology Center 3600

(571) 272-5250

jwk/lm: 3/6/12

LM





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 ww.uspto.gov

**CAPITOL PATENT &** TRADEMARK LAW FIRM, PLLC P.O. BOX 1995 VIENNA VA 22183

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of

Kaplan

Application No. 09/751,159

Filed/Deposited: 28 December, 2000 Attorney Docket No. 129250-002064/US **DECISION** 

This is a decision on the papers filed on 8 September, 2010, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the aboveidentified application, alternatively, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

#### NOTE:

The papers considered as the instant petition were received into the Office of Petitions for determination only at this writing.

Petitioner has not followed the clear language of the guidance in the Commentary at MPEP §711.03(c)(I) as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181—inter alia, Petitioner has not been timely in seeking relief under the Rule.

Ignoring the clear language and intent of the regulations at 37 C.F.R. §1.2, Petitioner inappropriately refers to conversations averred to have taken place with Office personnel. As one registered to practice before the Office, Petitioner is aware that all practice before the Office is in writing (see: 37 C.F.R. §1.21) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

Application No. 09/751,159

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**; the petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

# As to the Request to Withdraw the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181.

Petitioner appears <u>not</u> to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

# As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

#### <u>BACKGROUND</u>

The record reflects as follows:

Following the final Office action mailed on 3 July, 2006, with reply due absent extension of time on or before 3 October, 2006:

• On 1 September, 2006, Petitioner filed an amendment after final, which the Examiner refused to enter and Petitioner—as one registered to practice before the Office—knew was not as of right and not a proper reply<sup>2</sup> if it did not *prima facie* place the application in condition for allowance, and on 19 September, 2006, the Examiner mailed an Advisory Action;

A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

- On 3 October, 2006, Petitioner filed a Notice of Appeal with fee;
- On 4 December, 2006, Petitioner filed an Amendment, viewed by the Examiner as another amendment after final (see below);
- On 5 December, 2006, Petitioner asserted that he was not required to file a brief, demanded refunds, which demand appears not to have been granted, and appears to have filed a brief notwithstanding his assertion that no such filing was required;
- On 13 February, 2007, the Examiner mailed a second Advisory Action, and refused to enter the 4 December, 2006, amendment, which Petitioner—as one registered to practice before the Office—knew was not as of right and not a proper reply<sup>3</sup> if it did not *prima* facie place the application in condition for allowance;
- On 27 February, 2007, the Examiner mailed a Notice of Non-Compliant Brief (as to the 5 December, 2006, submission), with reply due absent extension of time on or before 27 March, 2007;
- On 20 March, 2007, the Examiner mailed an Interview Summary, noting that Petitioner had failed to file a proper amendment, and the existing amendment would not be entered;
- On 27 March, 2007, Petitioner submitted what he asserted was a "Corrected" appeal brief;
- On 18 July, 2007, the Examiner mailed a Notice of Abandonment, and stated therein that Petitioner again had failed to file a proper reply on 27 March, 2007, with properly amended and properly cancelled claims as required;
- It appears, therefore, that the application went abandoned after midnight 27 March, 2007.

Thereafter, the record is silent as to any action and any papers filed by Petitioner for more than three (3) years, and activity then occurs of record only with a 5 May, 2010, letter from the Office—reminding Petitioner therein of the requirements and constraints of the regulations at 37 C.F.R. §1.2,<sup>4</sup> a reminder that Petitioner ignored in the instant petition—that directed Petitioner to the appropriate provisions of the guidance in the Commentary at MPEP §711.03(c). Even then, the record again is silent until Petitioner filed the instant petition more than four (4) months later on 8 September, 2010, pursuant, alternatively, to 3 C.F.R. §1.181 or to 37 C.F.R. §1.137(b).

A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

The regulations at 37 C.F.R. §1.2 provide:

<sup>§1.2</sup> Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

In essence, Petitioner's averment:

- as to the request to withdraw the holding of abandonment is that he did not have to respond to the Examiner's requirements because he already had done so; and
- as to the petition to revive is that he was filing the petition (with fee), the reply in the form of a request for continued examination (with fee) and a submission pursuant to 37 C.F.R. §1.114 in the form of an amendment, and was making the statement that the entire delay from the due date of the reply to the filing of the instant petition was unintentional.

The history above demonstrates and the record is clear that Petitioner repeatedly failed to reply timely and properly to the Notices of the Examiner, and has failed to make the showing as outlined in the guidance in the Commentary at MPEP §711.03(c)(I). Moreover, Petitioner's reply to the Notice of Abandonment was late—more than forty-six months after abandonment and nearly thirty-eight (38) months after Notice thereof—under the Rule.

Thus, Petitioner failed to make the showing and the timely filing required pursuant to 37 C.F.R. §1.181 as discussed below in the citation(s) from the Manual of Patent Examining Procedure (MPEP).

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

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The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no

such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<sup>5</sup>

\*\*\*

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to timely fling:

\*\*\*

37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered

<sup>5</sup> See: MPEP §711.03(c) (I)(A).

into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).

37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512. <sup>6</sup>

\*\*\*

Petitioner's reply to the Notice of Abandonment was late under the rule (37 C.F.R. §1.181), and Petitioner is reminded of the guidance set forth in the Commentary at MPEP §711.03(c) (in pertinent part):

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# C. Treatment of Untimely Petition To Withdraw Holding of Abandonment

37 C.F.R. 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 C.F.R. §1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 C.F.R. §1.181(f).

Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 C.F.R. §1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

# 3. Utility and Plant Applications Filed on or After May 29, 2000

In utility and plant applications filed on or after May 29, 2000, a terminal disclaimer should **not** be required as a condition of granting an untimely petition to withdraw the holding of abandonment. This is because any patent term adjustment is automatically reduced under the provisions of 37 C.F.R. §1.704(c)(4) in applications subject to the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) if a petition to withdraw a holding of abandonment is not filed within two months from the mailing date of the notice of abandonment, and if applicant does not receive the notice of abandonment, any patent term adjustment is reduced under the provisions of 37 C.F.R. §1.704(a) by a period equal to the period of time during which the applicant

See: MPEP §711.03(c) (I)(B).

"failed to engage in reasonable efforts to conclude prosecution" (processing or examination) of the application.

Where the record indicates that the applicant intentionally delayed the filing of a petition to withdraw the holding of abandonment, the Office may simply dismiss the petition as untimely (37 C.F.R. §1.181(f)) solely on the basis of such intentional delay in taking action in the application without further addressing the merits of the petition. Obviously, intentional delay in seeking the revival of an abandoned application precludes relief under 37 C.F.R. §1.137(a) or (b) (\*\*\*).

\*\*\*

The record (including the petition filed on 8 September, 2010) does not necessitate a finding that the delay between midnight 27 March, 2007 (the date of abandonment), and 8 September, 2010 (the date of the filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/Counsel John E Curtain (Reg. No. 37,602) when accepting Petitioners' representation that the delay in filing the response was unintentional.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>8</sup>

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

<sup>&</sup>lt;sup>7</sup> See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

<sup>8</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

#### STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application. <sup>9,10</sup>

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. 11

# Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

<sup>&</sup>lt;sup>9</sup> See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an <u>unavoidable</u> delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under <u>Pratt</u>, and so cannot satisfy the test for diligence and due care. (By contrast, <u>unintentional</u> delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, <u>and</u> also, by definition, are not intentional.))

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Ouigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Petitioner appears not to have satisfied the showing and timeliness requirements.

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the Rule have been satisfied.

#### **CONCLUSION**

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is <u>dismissed</u>; the petition pursuant to 37 C.F.R. §1.137(b) is <u>granted</u>.

The instant application is released to the Technology Center/AU 2424 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>12</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

PETITION TO	ACCEPT UNIN		_Y DELAYED P ATENT (37 CFI	RAYMENT OF MAINTENANCE FEE IN AN R 1.378(c))		
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
6891381	2005-05-10	09/751,208	2000-12-29			
				ritify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR		
	ims, or has previously	claimed, small en	tity status. See 37 Cl	FR 1.27.		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee 3 ½ year			Fee 3 ½ year	Code (2551)		
7 ½ year	(1552)		7 ½ year	(2552)		
	(4550)		11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(ç aintenance fee must b	* *	his petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN I	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	REQUEST THAT THE	DELAYED PAYMI	ENT OF THE MAINTI	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	FORY OR SIGNATOR	RIES		
	tates: "Any petition und fice, or by the patented			attorney or agent registered to practice before the Patent st."		
I certify, in accorda	ance with 37 CFR 1.4(d	d)(4) that I am				
	or agent registered to	practice before the	e Patent and Tradem	ark Office		
A sole pater						
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are s	gning this e-petition	on			
The assignee of record of the entire interest						

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Scott C Harris/	Date (YYYY-MM-DD)	2011-05-04		
Name	Scott C Harris	Registration Number	32030		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6891381

Issue Date:

May 10,2005

Application No. 09751208

Filed:

December 29,2000

Attorney Docket No. VTC.0107

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

May 5,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

May 5,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

STMICROELECTRONICS, INC.
MAIL STATION 2346
1310 ELECTRONICS DRIVE
CARROLLTON TX 75006

# MAILED OCT 0 4 2010 OFFICE OF PETITIONS

In re Patent No. 7,757,066

Jarvis et al.

Issue Date: July 13, 2010

Application No. 09/751,372

Filed: December 29, 2000

Atty Docket No. 00-BN-051

(STMI01-00051)

: DECISION ON REQUEST

: FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: and

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the petition pursuant to 37 C.F.R. § 1.705(d), filed on July 21, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand, seven hundred and twenty-one (2721) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, seven hundred and fifty-nine (1759) days is **GRANTED to the extent indicated herein**.

A review of the record indicates that this patent is not subject to a terminal disclaimer.

This patent issued on July 13, 2010, with a patent term adjustment of 2644 days.

The Office has determined that the patent term adjustment for the above-identified patent is 1759 days.

First, it is noted that the PAIR calculations do not show line 30: a non-final office action was mailed on January 13, 2005.

Second, the Office properly accorded an eight-day reduction pursuant to 37 C.F.R. § 1.704(c)(8): a response to a non-final office action was received on January 3, 2006, and a supplemental response was received eight days later on January 11, 2006. Moreover, the Office failed to accord a-90-day reduction pursuant to 37 C.F.R. § 1.704(c)(7): a reply containing an omission was received on January 11, 2006. Ninety days later, a response was received on April 11, 2006. These two separate periods of delay, when added together, total 98 days. <sup>1</sup>

Third, a notice of appeal was filed on April 2, 2007, and a decision by the Board of Patent Appeals and Interferences was mailed 962 days later on November 19, 2009, reversing the examiner. This constitutes an adjustment to the patent term of 963 (not 962) days, pursuant to 37 C.F.R. § 1.703(e), since the date on which the notice of appeal was filed is included in the period.

Fourth, it follows that the period of examination delay totals  $1591 \ (628 + 963)$  days and the period of applicant delay totals  $153 \ (6 + 35 + 6 + 8 + 90 + 4 + 4)$  days. Moreover, the Office agrees that the over three year period totals  $2388 \ days$ . However, the appellate period is excluded from the over three period to arrive at the B-delay.

A first notice of appeal was filed on August 26, 2004 (not April 24, 2004)<sup>4</sup>, and a non-final office action was mailed on January 13, 2005. The 141 days of the over three year period consumed by appellate review, beginning on August 26, 2004 and ending on January 13, 2005, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

A second notice of appeal was filed on April 2, 2007, and a Decision on Appeal was mailed on November 19, 2009. The 963 days of the over three year period consumed by appellate review, beginning on April 2, 2007 and ending on November 19, 2009, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

Petition, paragraph 8.

<sup>&</sup>lt;sup>2</sup> Petition, paragraph 11.

<sup>&</sup>lt;sup>3</sup> Petition, paragraph 12.

<sup>&</sup>lt;sup>4</sup> Petition, paragraph 13.

It follows that the period of exclusion,  $1104^5$  (141 + 963) days is deducted from the period of B-delay, and not added thereto.

The Office has determined that the period of overlap totals 963 days. It follows that the period of B delay is 321 days: 2388 days over three years minus 1104 days that are excluded minus 963 days of overlap.

As such, the patent term adjustment is increased by 1759 (1591 examination delay plus 321 B-delay minus 153 Applicant delay) days, not 2721 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or Patentee an opportunity to be heard. Accordingly, Patentee is given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

This patent is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand, seven hundred and fifty-nine (1759) days.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is

<sup>&</sup>lt;sup>5</sup> Petitioner has calculated the period that was consumed by appellate review to be 1284 days. See petition, paragraph 13.
<sup>6</sup> Petition, paragraphs 13 and 14.

Patent No. 7,757,066 Application No. 09/751,372

Page 4

submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at http://www.uspto.gov/web/forms/sb0123.pdf.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540.

A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/ Paul Shanoski Senior Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

William A. Munck cc: Munck Carter, LLP P.O. Drawer 800889 Dallas, TX 75380

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

**PATENT** 

: 7,757,066 B2

DATED

July 13, 2010

**DRAFT** 

INVENTOR(S): Jarvis et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2644 days

Delete the phrase "by 2644 days" and insert – by 1759 days--





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Paper No.

STMICROELECTRONICS, INC. MAIL STATION 2346 750 CANYON DRIVE, SUITE 300 COPPELL TX 75019

MAILED JUL 22 2011

OFFICE OF PETITIONS

In re Patent No. 7,757,066

Jarvis et al.

Application No. 09/751,372

Issue Date: July 13, 2010

Filed: December 29, 2000 Atty Docket No. 00-BN-51

(STMI01-00051)

: LETTER REGARDING

: PATENT TERM ADJUSTMENT

This decision is in response to the "REQUEST FOR RECONSIDERATION OF DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," filed November 4, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from one thousand, seven hundred and fifty-nine (1759) days to two thousand, seven hundred and twenty-two (2722) days.

:

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:

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two thousand, seven hundred and twenty-two (2722) days is DISMISSED.

#### **BACKGROUND**

On July 13, 2010, the above-identified application matured into US Patent No. 7,757,066 with a patent term adjustment of 2644 A request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent on July 21, 2010, and the petition was granted via the mailing of a decision on October 4, 2010, to the extent that the decision indicated that the patent term adjustment would be extended by one thousand, seven hundred and fifty-nine (1759) The decision of October 4, 2010 set a non-extendable one month period for reply, and as such, this filing of November 4, 2010 is timely filed.

The record supports a conclusion that this patent is not subject to a terminal disclaimer.

With the decision of October 4, 2010, Patentee was accorded 321 (2388 over three years - 1104 that are excluded due to appellate review - 963 overlap) days of B-delay. Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 1284 (2388 - 1104). In other words, Patentee argues that the 963 days of overlap should not be deducted from the B-delay, as they fall on the same calendar days as one of two excluded appellate periods.

#### OPINION

As set forth in the decision of October 4, 2010, a first notice of appeal was filed on August 26, 2004, and a non-final office action was mailed on January 13, 2005. The 141 days of the over three year period consumed by appellate review, beginning on August 26, 2004 and ending on January 13, 2005, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). A second notice of appeal was filed on April 2, 2007, and a Decision on Appeal was mailed on November 19, 2009. The 963 days of the over three year period consumed by appellate review, beginning on April 2, 2007 and ending on November 19, 2009, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). It follows that the period of exclusion which is deducted from the B-delay totals 1104 (141 + 963) days.

The aforementioned notice of appeal was filed on April 2, 2007, and a Decision on Appeal was mailed on November 19, 2009, reversing the Examiner. This constitutes 963 days of examination delay, pursuant to 37 C.F.R. § 1.703(e).

Patentee argues that the Office should not deduct the 963-day period of overlap, as the entire period of overlap occurs on the same calendar days as the 963-day excluded period. 1

Patentee's argument has been considered, but not found persuasive. The Office holds that the 1104-day period comprised of the 141-day period from August 26, 2004 to January 13, 2005 and the 963-day period from April 2, 2007 to November 19, 2009, and this 1104-day period is excluded from the period of B-delay,

<sup>1</sup> Petition, pages 2-3.

and the 963-day period of A-delay from April 2, 2007 to November 19, 2009 overlaps with the period of B-delay. The Office further holds that it is proper to reduce the period of B delay by both the entire 963-day excluded period and the entire period of overlap, despite the fact that 963 days of the 963-day excluded period fall on the same calendar days as the overlapping period.

#### Conclusion

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the If Petitioner desires to receive future address of record. correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent

<sup>&</sup>lt;sup>2</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

Patent No. 7,757,066 Application No. 09/751,372

Page 4

Form (PTO/SB/123), may be found at <a href="http://www.uspto.gov/web/forms/sb0123.pdf">http://www.uspto.gov/web/forms/sb0123.pdf</a>.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540.

A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: William A. Munck
Munck Carter, LLP
P.O. Drawer 800889
Dallas, TX 75380

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6836016	2004-12-28	09751526	2000-12-29	42390P10081	
of the actual U.S. a 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)		
NOT Small Entity			Small Entity		
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)	
7 ½ year	(1552)		○ 7½ year	(2552)	
○ 11 ½ year	(1553)		○ 11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED					
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES	
and Trademark Of	fice, or by the patentee	e, the assignee, or		ttorney or agent registered to practice before the Patent st."	
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
	or agent registered to proceed to proceed to proceed to proceed to the contract of the contrac	practice before the	e Patent and Tradem	ark Office	
A sole patentee					
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.	
A joint patentee; all of whom are signing this e-petition					
The assignee of record of the entire interest					
I					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-28		
Name	Kendal M. Sheets	Registration Number	47077		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6836016

Issue Date:

December 28,2004

Application No. 09751526

Filed:

December 29,2000

Attorney Docket No. 42390P10081

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

September 30,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 30,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PAUL W. MARTIN NCR CORPORATION, LAW DEPT. 3097 SATELLITE BLVD., 2nd FLOOR DULUTH GA 30096

MAILED

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OFFICE OF PETITIONS

In re Application of

Walter

Application No. 09/751,630

Filed: 29 December, 2000

Attorney Docket No. 9003

**DECISION** 

This is a decision on the petition filed on 27 November, 2009, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

#### **NOTE:**

The instant petition appears not to have been docketed for consideration until this writing. Petitioner is reminded that cycle time on most matters in the Office of Petitions (OP) in fact is on the order of 90 to 120 days, and should Petitioner not receive a response from OP on a matter submitted to the Office for consideration by OP, Petitioner may wish immediately to seek Status of the matter.

Moreover, Petitioners always are reminded that regulatory provisions mandate limited time periods for seeking relief. (e.g., the regulations at 37 C.F.R. §1.181).

In addition, Petitioner failed to submit the petition fee required herein, notwithstanding Petitioner's statement that the fee was submitted. Petitioner is reminded that the Office may not act on the petition in the absence of submission of the fee. It appears from examination of the record that a general authorization was submitted on deposit of the application and the petition fee was charged to Deposit Account 14-0225 as authorized. Petitioner is cautioned to be attentive to such matters.

Petitioner failed to provide a direct-line telephone number at which he might be contacted. When the Office attempted to contact Petitioner, the telephone access system failed on a number of occasions—further, when the system did operate, Petitioner was unavailable over several calls, and Petitioner's telephone access system could not locate the named signer of the transmittal papers. As of this writing, Petitioner has not responded to messages left for him regarding this matter.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

# As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

#### **BACKGROUND**

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Appeal Brief mailed on 21 January, 2009, with reply due absent an extension of time on or before 21 February, 2009.

The application went abandoned by operation of law after midnight 21 February, 2009.

(The record reflects an incomplete and untimely submission by Petitioner on 25 September, 2009.)

It does not appear that the Office mailed a Notice of Abandonment before a petition was filed.

On 27 November, 2009, Petitioner filed, *inter alia*, a petition (without fee, however, after examination of the record, it appears that a general authorization was submitted on deposit of the application and the fee is charged as authorized) pursuant to 37 C.F.R. §1.137(b), a reply in the form of an amended Appeal Brief, and made a statement of unintentional delay.

The record (including the petition filed on 27 November, 2009) does not necessitate a finding that the delay between midnight 28 February, 2009 (the date of abandonment), and 27 November, 2009 (the date of the filing of grantable petition) and the further delay in seeking Status and/or otherwise seeking to have this matter addressed, was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/ Counsel Paul W. Martin (Reg. No. 34,870) when accepting Petitioners' representation that the delay in filing the response <u>was</u> unintentional.<sup>1</sup>

See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation-since all owe to the Office the continuing duty to disclose.<sup>2</sup>

#### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).<sup>3</sup> The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>4</sup>))

# As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

#### CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is granted.

<sup>&</sup>lt;sup>2</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

35 U.S.C. §133 provides:

<sup>35</sup> U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

The instant application is released to the Technology Center/AU 3733 for further processing in due course to include the submission of the Examiner's Answer.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>5</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Patent No.

: 7,813,500 B2

Ser. No.

: 09/752.167

Inventor(s) : Miller

Issued

: Oct. 12, 2010

Title

: METHOD AND APPARATUS FOR RINGING

Docket No. : 2069.008600

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing incorrect or erroneous assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp. 1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1. 17(i) (currently \$130);
- B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of the date the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(703) 872-9306

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

# **Ennis Young**

For Mary Diggs Decisions & Certificates of Correction Branch (571) **272-3435** or (703) 756-1814

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

DEC 08 2011

OFFICE OF PETITIONS

HAVERSTOCK & OWENS LLP 162 N WOLFE ROAD SUNNYVALE CA 94086

In re Patent No. 6,738,789 Issue Date: May 18, 2004 Application No. 09/753,644

Filed: January 2, 2001

Attorney Docket No. FUSI-04107

**NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 26, 2011.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Attorney Advisor.

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

# ROCHE MOLECULAR SYSTEMS, INC. 4300 HACIENDA DRIVE **PLEASANTON CA 94588**

MAILED

OCT 19 2011

OFFICE OF PETITIONS

In re Patent No. 6,518,060

Issued: February 11, 2003

Application No. 09/754,017

Filed: April 13, 2001

Attorney Docket No. 23337-US

ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 23, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski **Petitions Examiner** Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAYER BROWN, LLP PO BOX 2828 CHICAGO, IL 60690

**MAILED** 

AUG 27 2010

In re Application of Rudolfus A. T. M. Van Benthem, et al. Application No. 09/754,243 Filed: January 5, 2001 Attorney Docket No. P 275922 9637US/CONT

**OFFICE OF PETITIONS**DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 5, 2010.

The request is **NOT APPROVED**.

The Office will not decide request to withdraw from representation as practitioner of record which are filed after the patent has issued. Sections 2540 and 2542 of the Manuel of Patent Procedures (MPEP explain that a practitioner does not have to request permission to withdraw as practitioner of record under 37 CFR 1.36 in order to change the address in a patented filed and to directed notices, receipts and other communications relating to maintenance fees. These requests will be placed in the application but will not be treated on their merits. The above mentioned sections of the MPEP recommend the designation of a fee address or submission of a change in correspondence address in the patented file for directing correspondence relating to maintenance fee payments and other correspondences after issuance. See Form PTO/SB/47, entitled, "Fee Address" Indication Form and Form PTO/SB/123, entitled, Change of Correspondence Address, Patent

Accordingly, the request to withdraw from record cannot be approved because the request does not include an acceptable current correspondence address for future communications from the Office.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

/AMW/ April M. Wise Petitions Examiner Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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DELBERT J. BARNARD BARNARD & PAULY, P.S. P.O. BOX 58888 SEATTLE, WA 98138-1888

MAILED APR 14 2011

OFFICE OF PETITIONS

In re Patent No. 6,425,626

Issue Date: January 4, 2001

Application No. 09/754,705

Filed: January 4, 2001

Patentee(s): Michael Kloepfer

ON PETITION

This is a decision in response to the petition, filed February 14, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent under the provisions of 37 CFR 1.378(c).

#### The petition is **GRANTED**.

This patent expired on July 30, 2010 for failure to pay the second maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition is timely filed under the provisions of 37 CFR 1.378(c).

The petition is not signed by a registered patent attorney or agent of record. However, in accordance with 37 CFR 1.34, the signature of Leslie A. Kinsmen appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Kinsmen desires to receive correspondence regarding this patent, then the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to the petitioner herein; however, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nonetheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office. Receipt is acknowledged of the requisite maintenance fee and surcharge.

In view of the above, the  $7 \frac{1}{2}$  year maintenance fee in this case is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

cc: LESLIE A. KINSMEN
100 QUEEN STREET, SUITE 1100
OTTAWA, ONTARIO, K1P 1J9
CANADA

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)		Docket Number (if applicable)	
6431566	2002-08-13	09755159	2001-01-08		22163/76799	
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY						
X Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.						
	EMENT TO SMALL EN to longer entitled to sm		See 37 CFF	R 1.27(g)		
NOT Small Entity			Small Er	Small Entity		
Fee  3 ½ year	Code (1551)			Fee 3 ½ year	Code (2551)	
7 ½ year	(1552)		_	7 ½ year	(2552)	
-	• • • • • • • • • • • • • • • • • • • •			11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must I	be paid as	a condition of accepting unintentionally delayed payment	
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.						
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL						
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED						
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES						
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."						
I certify, in accordance with 37 CFR 1.4(d)(4) that I am						
An attorney or agent registered to practice before the Patent and Trademark Office						
A sole patentee						
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.						
A joint patentee; all of whom are signing this e-petition						
The assignee of record of the entire interest						

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Christopher W. Raimund/	Date (YYYY-MM-DD)	2010-09-27		
Name	Christopher W. Raimund	Registration Number	47258		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6431566

Issue Date:

August 13,2002

Application No. 09755159

Filed:

January 8,2001

Attorney Docket No.

September 27,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 27,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
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MAXEY LAW OFFICES, PLLC 15500 ROOSEVELT BLVD. SUITE 305 CLEARWATER, FL 33760

MAILED

JUL 0 5 2011

OFFICE OF PETITIONS

In re Patent No. 6,413,015

Issue Date: July 02, 2002

Application No. 09/755,247

Filed: January 08, 2001

Attorney Docket No.

**DECISION ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed May 02, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

## The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (3) above.

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
  - (3) An assignee as provided for under §3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Karen Poirier) was ever given a power of attorney to act on behalf of inventor Keith Poirier, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

The power of attorney filed by the applicants/inventors has been accepted and made of record.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22212, 146

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-4231.

Michelle R. Eason Paralegal Specialist Office of Petitions

Mrhalle l Zeer



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAXEY LAW OFFICES, PLLC 15500 ROOSEVELT BLVD. SUITE 305 CLEARWATER, FL 33760 MAILED
AUG 0 1 2011
OFFICE OF PETITIONS

In re Patent No. 6,413,015

Issue Date: July 02, 2002

Application No. 09/755,247

Filed: January 08, 2001

Attorney Docket No.

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.378(c), filed July 20, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 02, 2010 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

The patent file is being forwarded to Files Repository.

Michelle R. Eason Paralegal Specialist Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

TABLE TOTER, INC. 49 MARTIN STREET ELKINS WV 26241-3490

MAILED MAY 04 2011

OFFICE OF PETITIONS

In re Patent No. 6,454,282

Issue Date: September 24, 2002

Application No. 09/755,800

Filed: January 5, 2011

Attorney Docket No. 8127-3

Patentee(s): Sexton et al.

DECISION ON PETITION

UNDER 37 CFR 1.378(b)

This is a decision on the petition under 37 CFR 1.378(b), filed February 3, 2011, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent.

## The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued September 24, 2002. The 7.5-year maintenance fee could have been paid from September 24, 2009 through March 24, 2010, or with a surcharge during the period from March 25, 2010 through September 24, 2010. Accordingly, the patent expired at midnight September 24, 2010, for failure to timely submit the 7.5-year maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks item (1) above.

Patent No. 6,454,282 Page 2

Petitioner states that the delay in payment of the 7.5-year maintenance fee was unavoidable due to the correspondence address not being timely and properly updated. On July 3, 2008, a Change of Correspondence Address was received. Although it was originally deemed unreadable and not processed, on March 9, 2011, the correspondence address was finally processed and the address was updated in the USPTO system.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

37 CFR 1.378(b)(3) states that any petition to accept delayed payment of a maintenance fee must include:

"A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly."

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd dub nom. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the maintenance fee for this patent. Id. As the patent holder at the time of expiration, it was incumbent on petitioner to have itself docketed this patent for payment of the maintenance fee in a reliable system as would be employed by a prudent and careful person with respect to his most important business, or to have engaged another for that purpose. See California Medical Products v. Technol Med. Prod., 921 F.Supp. 1219, 1259 (D.Del. 1995). Even where another has been relied upon to pay the maintenance fees, such asserted reliance per se does not provide a petitioner with a showing of unavoidable delay within the meaning of 37 CFR § 1.378(b) and 35 USC § 41(c). Id. Rather, such reliance merely shifts the focus of the inquiry from the petitioner to whether the obligated party acted reasonably and prudently. Id. Nevertheless, a petitioner is bound by any errors that may have been committed by the obligated party. Id.

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, supra. See also Final Rule entitled "Final Rules for Patent Maintenance Fees." published in Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at Off. Gaz Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patente to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying maintenance fee from patentee to the Office. See MPEP 2590.

However, the record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of petitioner to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement

therein for petitioner's showing of the steps taken to pay the fee. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. In the absence of a showing of the steps taken by or on behalf of petitioner, 37 CFR 1.378(b)(3) precludes acceptance of the maintenance fee.

Furthermore, the Letters Patent contains a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980. Accordingly, a reasonably prudent patentee would have inquired to see if his/her patent was subject to maintenance fees.

Petitioner will not receive future correspondence related to maintenance fees for the above identified patent unless a "fee address" (see PTO/SB/47) is submitted for the above-identified patent. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

As such, the showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Petitioner should also note that since the maintenance fee was proffered within 24 months of the date of expiration date of the patent, he has an alternate remedy under the unintentional provisions of 37 CFR 1.378(c). The \$700 already submitted would be applied to the \$1,640 fee owed under 37 CFR 1.378(c), leaving a balance due of \$940.

Petitioner is also cautioned that any future petition must be signed by:

(1) An attorney or agent of record appointed in compliance with § 1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

- (3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest:
- (4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or
- (5) All of the applicants (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

The instant petition was only signed by Kenny A. Sexton, one of the three listed applicants. Any future petition should either be signed by all of the applicants, or accompanied by a Statement under 37 CFR 3.73(b), which is required whenever an assignee wishes to take action.

Future correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450 By hand:

Customer Service Window

Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax:

(571) 273-8300 ATTN: Office of Petitions

Any questions concerning this matter may be directed to Petitions Examiner Liana Walsh at (571) 272-3206.

/dab/ David Bucci **Petitions Examiner** Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

www.uspto.gov

TABLE TOTER, INC. 49 MARTIN STREET ELKINS WV 26241-3490 MAILED

JUL 18 2011

OFFICE OF PETITIONS

Patent No. 6,454,282

Application No. 09/755,800

Filed: January 5, 2001 :

Issued: September 24, 2002

Attorney Docket No. 8127-3

ON PETITION

## REQUIREMENT FOR INFORMATION

A petition was filed on June 15, 2011 under 37 CFR 1.378(c) to accept the delayed payment of a maintenance fee for the above-identified patent.

A decision on this petition will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit petitioner to address the following issues before a decision is rendered. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).

The instant petition is not signed by a person authorized to sign a petition under 37 CFR 1.378 in the above-identified patent. 37 CFR 1.378(d) requires that any petition under 37 CFR 1.378 be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

[X]

The instant petition appears to be on behalf of the assignee; however, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission

establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed with this requirement for information.

The response to this Requirement for Information should include a cover letter entitled "Response to Requirement for Information."

At the end of the two month period specified above, a decision will be rendered on the instant petition under 37 CFR 1.378 as supplemented by any information submitted in response to this Requirement for Information.

In order to expedite reinstatement of this patent, petitioner may wish to consider submitting the reply to the requirement for information by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By Hand:

U.S. Patent and Trademark Office

Customer Service Window Randolph Building

401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-3206.

/Liana Walsh/ Liana Walsh Petitions Examiner Office of Petitions

Enclosure:

PTO/SB/96 – Statement under 37 CFR 3.73(b)

# United States Patent and Trademark Office



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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TABLE TOTER, INC. 49 MARTIN STREET ELKINS WV 26241-3490

MAILED
AUG 15-2011
OFFICE OF PETITIONS

Patent No. 6,454,282

Application No. 09/755,800

Filed: January 5, 2001

Issued: September 24, 2002

ON PETITION

Attorney Docket No. 8127-3

This is a decision on the renewed petition under 37 CFR 1.378(c), filed July 27, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

## The petition is **GRANTED**.

The patent issued September 24, 2002. The last day of the grace period for paying the 7.5-year maintenance fee was September 24, 2010. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

/Liana Walsh/ Liana Walsh Petitions Examiner Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

RANDALL L MAY C/O RANDALL MAY INTERNATIONAL, INC. 1402 MC GAW AVE IRVINE CA 92614-5541

MAILED

JAN 1 1 2011

OFFICE OF PETITIONS

In re Patent of May

Patent No. 6,403,869

Issued: June 11, 2002 Application No. 09/756,479

Filed: January 8, 2001

Attorney Docket No. N/A

For: CARRIER ASSEMBLY FOR PERCUSSION INSTRUMENTS

DECISION ON PETITION UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed September 16, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the petition.

## The petition is **DISMISSED.**

The instant application was filed January 8, 2001. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

- the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in  $\S 1.17(t)$ ; and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

This application matured into U.S. Patent No. 6,403,869 on June 11, 2002. Accordingly, submission of a certificate of correction (along with the \$100 fee) will be required as a condition for granting the petition under 37 C.F.R. §1.78(a)(3).

In summary, petitioner must submit a certificate of correction (accompanied by the \$100 fee), along with a renewed petition under 37 CFR 1.78(a)(3).

There is no indication that the person signing the petition was ever given a power of attorney. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By internet:

**EFS-Web** 

www.uspto.gov/ebc/efs\_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).

Any questions concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley Senior Petitions Attorney

Office of Petitions

CC: BUHLER ASSOCIATES

BUHLER, KIRK A.

1101 CALIFORNIA AVE.

**SUITE 208** 

CORONA CA 92881



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

RANDALL L MAY C/O RANDALL MAY INTERNATIONAL, INC. 1402 MC GAW AVE IRVINE CA 92614-5541

MAILED

FEB 1,4 2011

OFFICE OF PETITIONS

In re Patent of May

Patent No. 6,403,869

Issued: June 11, 2002 Application No. 09/756,479

Filed: January 8, 2001 Attorney Docket No. N/A

For: CARRIER ASSEMBLY FOR PERCUSSION INSTRUMENTS

**DECISION GRANTING PETITION** 

UNDER 37 CFR 1.78(a)(3) AND

REQUEST FOR CERTIFICATE OF

CORRECTION

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed January 21, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the proposed certificate of correction accompanying the petition.

## The petition is **GRANTED**.

A review of the file record fails to disclose that a claim for the benefit of priority to newly claimed prior-filed nonprovisional applications was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed applications as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed January 8, 2001. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in  $\S 1.17(t)$ ; and
- a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

As the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

Shirene Willis Brantley Senior Petitions Attorney

Office of Petitions

ATTACHMENT: Corrected Filing Receipt



#### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. BOX 1450 Alexandria, Virginia 22313-1450

APPLICATION	FILING or	GRP ART		I -		
NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/756,479	01/08/2001	2837	429		21	3

RANDALL L MAY C/O RANDALL MAY INTERNATIONAL, INC. 1402 MC GAW AVE IRVINE, CA 92614-5541 CONFIRMATION NO. 4201
CORRECTED FILING RECEIPT



Date Mailed: 02/09/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

#### Applicant(s)

Randall L. May, Newport Beach, CA;

#### **Power of Attorney:**

Neal Mosely--16246

#### Domestic Priority data as claimed by applicant

This application is a CIP of 09/507,800 02/22/2000 PAT 6,172,290 which is a CIP of 09/497,266 02/03/2000 PAT 6,329,583 which is a CIP of 09/497,265 02/03/2000 PAT 6,323,407 which is a CIP of 08/976,999 11/24/1997 PAT 6,028,257 which is a CIP of 08/588,244 01/18/1996 PAT 5,691,492

**Foreign Applications** (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see <a href="http://www.uspto.gov">http://www.uspto.gov</a> for more information.)

If Required, Foreign Filing License Granted: 02/23/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/756,479** 

Projected Publication Date: Not Applicable

Non-Publication Request: No Early Publication Request: No

\*\* SMALL ENTITY \*\*

**Title** 

#### CARRIER ASSEMBLY FOR PERCUSSION INSTRUMENTS

#### **Preliminary Class**

084

#### PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect, intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

#### LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

#### **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

NEIFELD IP LAW, PC 4813-B EISENHOWER AVENUE ALEXANDRIA VA 22304

MAILED

SEP 1 0 2010

OFFICE OF PETITIONS

In re Application of

Michael C. Scroggie et al.

Application No. 09/756,788

Filed: January 10, 2001

Attorney Docket No.: CAT/29US-SCRCO3

ON PETITION

This is a decision on the petition filed May 13, 2009, which was supplemented on May 26, 2009, supplemented a second time on June 2, 2009 and supplemented a third time on June 29, 2009. The petition and three supplements were filed under 37 CFR 1.181, requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated April 10, 2009, which refused to issue a response on the merits to the Appeal Brief filed October 23, 2008 and further refused to remove the examiner and SPE from the instant application. Specifically:

The petition filed May 13, 2009 requests reconsideration of the refusal to enter and consider the appeal filed October 23, 2008. The petition further requests reconsideration of the refusal to remove the instant application from the current examiner.

The first supplemental petition filed May 26, 2009 requests the same relief as the petition filed May 13, 2009.

The second supplemental petition filed June 2, 2009 requests the examiner to respond to the amendment filed September 29, 2008.

The third supplemental petition filed June 29, 2009 requests reconsideration of the examiner's decision in the notice of non-compliant brief filed October 23, 2008.

The petition to overturn the decision of the Technology Center Director in regard to the Appeal Brief filed October 23, 2008 is **DISMISSED** as being **MOOT**.

The petition to overturn the decision of the Technology Center Director in regard to the removal of the examiner and SPE is **DENIED**.

## **BACKGROUND**

The papers filed relevant to the instant petition are as follows:

A non-final Office action was mailed September 17, 2008.

An amendment responsive to the Office action was filed September 29, 2008.

A Notice of Appeal and Appeal Brief were filed October 23, 2008.

A Notice of Defective Appeal Brief was mailed January 26, 2009.

A Petition under 37 CFR 1.181 was filed January 30, 2009 and was Granted in Part by the Technology Center Director in a decision mailed April 10, 2009.

An Examiner's Answer was mailed May 29, 2009.

Between May 15, 2009 and June 29, 2009 the instant petition and three supplements were filed.

## **OPINION**

#### In regard to consideration of the Appeal Brief filed October 23, 2008:

A review of the file record to date indicates that the Examiner's Answer mailed May 29, 2009 is in response to the Appeal Brief filed October 23, 2008, see lines 1-2 of page 2 of the Examiner's Answer. The Examiner's Answer indicates on page 3, last paragraph, that the applicant agreed to cancel the amendment filed under 37 CFR 1.111 (it appears that the amendment in question is the one filed September 29, 2008). The relief requested in this petition has been satisfied by the Examiner's Answer.

#### In regard to the request to remove the examiner and SPE:

The gravamen of petitioners' complaint seems to be that the examiner of record has allegedly made seven procedural errors in the Office actions and thus the appearance of bias against applicant has been shown. The Technology Center Director indicated in her decision that only the last two actions had been issued by the examiner of record. The Technology Center Directors' decision further indicated that there was no evidence of bias on the part if the examiner or SPE.

As noted in <u>In re Ovshinsky</u>, 24 USPQ2d 1241, 1251-2 (Comm'r Pats.1992), the issue is not whether the perceptions of an applicant regarding alleged bias are reasonable; rather, the issue is whether an applicant has demonstrated improper conduct, including bias or the appearance of

bias, on the part of the examiner or Technology Center Director. A full review of the facts set forth in the petition, as well as a full consideration of the entire record of this application, fails to reveal bias or improper conduct on the part of either the Technology Center Director the examiner. As such, there is no reversible error in the Technology Center Director's decision.

For the above reasons, there is no reason for disturbing the Technology Center Director's decision to refuse petitioners' request to assign a new examiner and SPE to this application.

## **DECISION**

Since the record shows the amendment filed September 29, 2008 has been "canceled" and the examiner has mailed an Examiner's Answer in response to the Appeal Brief filed October 23, 2008, the relief requested in regard to the amendment and Appeal Brief is dismissed as moot.

Since the record shows no error on the part of the Technology Center Director in regard to refusing to reassign the application to a new examiner and SPE, the petition to overturn the Technology Center Director in regard to this matter is **denied**.

This decision becomes a final agency action within the meaning of 5 U.S.C. § 704 for the purposes of seeking judicial review upon entry of a final decision by the Board of Patent Appeals and Interferences. See MPEP 1002.02.

This application is being forwarded to Technology Center 3600 for further processing.

Telephone inquires concerning this decision should be directed to Carl Friedman at (571) 272-6842.

Robert W Rahr

Acting Associate Commissioner For Patent Examination Policy

ak/cf



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Thermal Partners, LLC (George A. Edwards) 1434 Schoolhouse Way San Marcos CA 92078

MAILED

APR 13 2011

In re Application of

Jose Javier Macias et al.

Patent No. 6,408,630

Issue Date: June 25, 2002

Application No. 09/756,896

Filed: January 9, 2001

Attorney Docket No. 99-1101P-A

OFFICE OF PETITIONS

On Petition

This is in response to the request to change correspondence address and pay maintenance fees, filed February 14, 2011. The request to pay the maintenance fee is being treated as a petition under 37 CFR 1.378(b), to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

The request to change the correspondence address has been accepted.

The petition under 37 CFR 1.378(b) is **dismissed**.

A petition under 37 CFR 1.378(b) requires a petition fee of \$700. The petition did not include the required fee and thus no consideration of the petition can be given. It is noted that petitioner indicates the reason the maintenance fee was not timely paid was because the Office did not correct the correspondence address to be that of petitioner. The Office reminder to pay maintenance fees is a courtesy letter only, patentees are expected to know when maintenance fees are due and to timely pay them. Failure to receive the reminder is not an acceptable showing of unavoidable late payment of the maintenance fees.

It is suggested that petitioner file a petition for <u>unintentional</u> late payment of the maintenance fee. The fee for this petition is \$1,640. A form for this petition is attached for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By Hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this matter should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

Attachment: Form PTO/SB/66

EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6485289	2002-11-26	09757288	2001-01-08	100842.00001	
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		suance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR FR 1.27.	
	EMENT TO SMALL EN		See 37 CFR 1.27(g)		
NOT Small Entity			Small Entity		
Fee	Code		Fee	Code	
3 ½ year	(1551)		3 ½ year	(2551) (2552)	
7 ½ year	(1552)		7 ½ year 11 ½ year	(2553)	
	· (1553)		11 /2 year	(2333)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.		
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL					
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED					
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES					
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office					
A sole patentee					
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.					
A joint patentee; all of whom are signing this e-petition					
The assignee of record of the entire interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/James L. Reed/	Date (YYYY-MM-DD)	2012-03-14		
Name	James L. Reed	Registration Number	43877		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6485289

Issue Date:

November 26,2002

Application No. 09757288

Filed:

January 8,2001

Attorney Docket No. A-68729-1/REB

March 14,2012

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 14,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.usoto.gov

MAILED

MAR 08 2011

**OFFICE OF PETITIONS** 

: DECISION ON PETITION

Northwest Software, Inc. Attn.: Chetan Shah, Vice-President PPO Box 91396

Portland OR 97291-0396

In re Application of

Shah, et al.

Application No. 09/757,322

Filed: January 9, 2001

For: EMPLOYMENT RECRUITING

**SYSTEM** 

This is a decision on the renewed petition under 37 CFR 1.137(a), filed May 25, 2010, to revive the above-identified application.

## The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is not a final agency decision.

This application became abandoned June 29, 2008 for failure to timely submit a proper reply in response to the Decision by the Board of Patent Appeals and Interferences mailed April 28, 2008. The Decision set a two month period of time for reply. Notice of Abandonment was mailed August 19, 2008.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition fails to satisfy requirement (3) set forth above.

The Office may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to have been "unavoidable." See, 37 CFR 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important

business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

#### Petitioner states:

- "1. I am the first and primary inventor. Due to a surgery I was in disability for an extended period of time (see attached payments of disability by insurance company). I had a life-threatening reaction to the surgery that required that I be rushed to the hospital.
- 2. There are pending claims allowed in the Board Decision rendered on April 28, 2008. Our attorney of record at the time emailed me on June 2, 2008: The case will be returned to the examiner and we should receive an Office action to amend the allowed claims but that is somewhere in the future." We never received any such office action.
- 3. On June 23, 2008 the attorney of record filed a request to withdraw as attorney or agent of record. The attorney stated that "You have failed to pay one or more bills". This reason is misleading as our understanding is for a fixed-fee arrangement after the patent process is completed. I was therefore surprised that the USPTO approved on 9/8/2008 the attorney's request to withdraw as our attorney without giving us the opportunity to respond or consider our evidence."

Petitioner seemingly attributes the delay in timely responding to the Board decision to communications between petitioner and his prior counsel and to his own medical condition.

In general, the Office looks to the actions or inactions of duly authorized and voluntarily chosen representatives of an applicant. Further, applicant is bound by the consequences of those actions or inactions. See, Link v. Wabash, 370 U.S. 626, 633-34 (1962). Thus, as to petitioner's communication with former counsel by which petitioner did not believe that further response from applicant was required, such miscommunication is not suitable grounds for a finding of unavoidable delay.

As to petitioner's assertion that his medical condition prevented a timely response to the Decision mailed April 28, 2008, petitioner has failed to establish that the medical condition precluded timely reply to the Decision mailed April 28, 2008 by either petitioner or anyone with requisite authority at the assignee company.

As to petitioner's medical condition, petitioner has failed to establish a nexus between the medical condition and the failure to timely submit a properly reply to the Decision mailed April 28, 2008. Petitioner does not indicate when his medical condition commenced and ended. Though not required to do so, petitioner has not provided documents from licensed health care providers, demonstrating the nature and extent of petitioner's medical condition, in such a

manner that establishes that petitioner was, from the date a reply was to the outstanding Office communication was due until the filing of the instant petition, "unavoidably" prevented from timely submitting a proper reply to the Decision. Additionally, petitioner has failed to indicate how he managed to conduct his daily personal and business affairs, including scheduling and settlement of short and long term debts and business obligations, bills, rent or mortgage payments, income taxes etc., during the time period at issue. Petitioner has not established that the assignee was likewise precluded from timely replying to the Decision.

Petitioner must demonstrate that his health problems were such as to cause the reply to the Decision to have been unavoidably delayed. Petitioner must establish that both petitioner and the assignee company were precluded from timely submitting a proper reply to the Decision mailed April 28, 2008.

As to petitioner's concern that a request to withdraw as attorney was granted in the instant case, petitioner is advised that prior counsel was properly withdrawn because at the time that the request was acted upon, the instant application was abandoned.

The instant petition lacks sufficient documentary evidence of the events complained of. Accordingly, it cannot be found that the entire delay in timely submitting a proper reply to the Decision mailed April 28, 2008 was unavoidable.

Any renewed petition must be accompanied by evidence to sufficiently establish that the entire period of delay in responding to the non-final Office action was unavoidable.

#### **ALTERNATE VENUE**

Petitioner may wish to consider filing a petition stating that the entire delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b). The Director may require additional information where there is a question whether the delay was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition

**Commissioner for Patents** 

P.O. Box 1450

Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300

By hand:

U.S. Patent and Trademark Office

Customer Window Mail Stop Petition Randolph Building Dulany Street

Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

Enclosure



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Northwest Software, Inc.

Attn.: Chetan Shah, Vice-President

PPO Box 91396

Portland OR 97291-0396

MAILED

DEC 1 4 2011

OFFICE OF PETITIONS

: DECISION ON PETITION

In re Application of

Shah, et al.

Application No. 09/757,322

Filed: January 9, 2001

rned. January 9, 2001

For: EMPLOYMENT RECRUITING

**SYSTEM** 

:

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 18, 2011, to revive the above-identified application

## The petition is **GRANTED**.

The application became abandoned June 29, 2009 for failure to timely submit a proper reply to the decision by the BPAI mailed April 28, 2009. The decision set a two month statutory period of time for reply. Notice of Abandonment was mailed August 19, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 3629 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Attorney Advisor Office of Petitions

	SPE RESPONSE FOR CER	RTIFICATE OF CORRECTION
DATE	· 11-15-11	Paper No.:
TO SPE OF	: ARTJUNIT QUA	1
SUBJECT	: Request for Certificate of Correction for	Appl. No.: 09/75734 Patent No.: PRHQ 66H
0026201	. requisitor community of correction for a	CofC mailroom date: 10-31-11
DI	and to the control of the control	
-	ond to this request for a certificate	· •
	LES: Should cofc	•
the IFW app		ons as shown in the <b>COCIN</b> document(s) in sould be introduced, nor should the scope or
	plete the response (see below) an nent code COCX.	d forward the completed response to scanning
FOR PAPER	R FILES:	
		ons as shown in the attached certificate of elow) and forward it with the file to:
	lolph Square – 9D10-A Location 7580	Certificates of Correction Branch
		703-756-1814
Thank Va.	For Your Assistance	703-730-1314
	t for issuing the above-identified	d correction(s) is hereby:
	on the appropriate box.	u correction(a) is necess.
Ø	Approved	All changes apply.
ف	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
		the certificate of correction dated
comments:	10/31/2011 are approved.	
	No new matter has been i	ntroduced and the scope of the claims
	not been changed.	
	•	
	7	. 77
	_/_	CDE Artinit
DL-306 (REV. 7/03)		SPE Art Unit S. DEPARTMENT OF COMMERCE Patent and Trademark Office

PTOL-306 (REV. 7/03)

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

MELVIN I. STOLTZ 51 CHERRY STREET MILFORD CT 06460

> MAILED APR 252011

OFFICE OF PETITIONS

In re Application of

Robert A. Winquist et al.

Application No. 09/757,912

Patent No. 6,613,049

Filed: January 10, 2001

Attorney Docket No. 878-002

NOTICE UNDER 37 CFR. 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney documents must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page Petitions Examiner

Office of Petitions

cc: MICHAEL D. GAGLIANO

**BAKER & DANIELS** 

111 EAST WAYNE STREET, SUITE 800

**FORT WAYNE, IN 46802** 



In re Application of	)
Robert A. Winquist et al.	)
Serial No. 09/757,912	) Group: 3743
Filed: January 10, 2001	)
Title: ADJUSTABLE BONE STABILIZING	) Examiner: Kathryn P. Odland
FRAME SYSTEM	)

# NOTIFICATION OF ERROR IN ENTITY STATUS UNDER 37 C.F.R. § 1,28

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Applicants hereby notify the Commissioner that the Applicants in the above-identified patent are not entitled to pay fees as a small entity. Status as a small entity was established in good faith and fees as a small entity were paid in good faith, however, it was discovered that Applicants were not entitled to pay fees as a small entity. Therefore, pursuant to 37 C.F.R. §1.28(c), Applicants hereby submit payment of the deficiency between the amounts paid, including the following:

Type of Fee	Current Fee Amount for a Non-Small Entity	Amount paid as Small Entity	Date of Original Payment	Deficiency Owed	
Payment of Maintenance Fee, 4 <sup>th</sup> Year	\$980.00	\$450.00	March 6, 2007	\$530.00	
				Total Deficiency Owed:	\$530.00

The United States Patent and Trademark Office is authorized to charge the amount of \$530.00 for the deficiency payment to Deposit Account 02-0385, Baker & Daniels LLP. If additional fees are necessary in connection with this document, or insufficient fees are sent herewith, please charge Deposit Account No. 02-0385, Baker & Daniels LLP.

Respectfully submitted,

Michael D. Gagliano Registration No. 62,037

Attorney for Applicant

MDG/ms

BAKER & DANIELS Suite 800 111 East Wayne Street Fort Wayne, IN 46802 Telephone: 260-424-8000 Facsimile: 260-460-1700

Date: March 23, 2011

#### **CERTIFICATION OF ELECTRONIC FILING**

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on the date indicated below:

MICHAEL D. GAGLIANO, REG. NO. 62,037

Name of Registered Representative

Signature

March 23, 2011

Date



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PILLSBURY WINTHROP SHAW PITTMAN LLP P.O. BOX 10500 MCLEAN, VA 22102

MAILED MAR 22:2011

OFFICE OF PETITIONS

In re Patent of Anderson et al.

Patent No. 6,893,638

Issue Date: May 17, 2005 :

Application No. 09/758,173

Filing Date: January 12, 2001

Attorney Docket No. 037003-0276603

Letter

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed November 12, 2010.

The deficiency payment of \$490 is hereby accepted.

The change of status to large entity has been entered and made of record.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

MAILED

FEB 17-2011

OFFICE OF PETITIONS

LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480

In re Patent No. 7,191,690

Issue Date: March 20, 2007

Application No.: 09/758,299 : ON PETITION

Filed: January 10, 2001

Attorney Docket No.: HEM 99/607 (A-2911) :

This is a decision in response to a communication filed May 7, 2007, which is being treated as a request under 37 CFR 3.81(b)<sup>1</sup> to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction. The delay in responding is regretted; however, the communication was recently referred to the Office of Petitions for consideration.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

<sup>&</sup>lt;sup>1</sup> See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6392912	2002-05-21	09758940	2001-01-10	032001-038	
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	enance fee (and surcha application leading to is ims, or has previously	ssuance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
LOSS OF ENTITL	EMENT TO SMALL EN	ITITY STATUS	•		
NOT Small Entity			Small Entity		
Fee	Code		Fee 3 ½ year	Code (2551)	
3 ½ year	(1551)		7 ½ year	(2552)	
<ul><li>7 ½ year</li><li>11 ½ year</li></ul>	(1552) · (1553)		11 ½ year	(2553)	
of the maintenance		))		a condition of accepting unintentionally delayed payment	
UNINTENTIONAL				MAINTENANCE FEE TO THIS PATENT WAS	
REINSTATED	REQUESTIHATTHET	DELAYED PAYME	NI OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES	
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."	
I certify, in accorda	ance with 37 CFR 1.4(c	i)(4) that I am			
<ul><li>An attorney</li></ul>	or agent registered to	oractice before the	Patent and Tradema	ark Office	
A sole pater	ntee				
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.	
A joint pater	ntee; all of whom are si	gning this e-petitio	on		
The assigne	ee of record of the entir	e interest			

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature /Kendal M. Sheets/ Date (YYYY-MM-DD) 2010-10-15					
Name	Kendal M. Sheets	Registration Number	47077		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6392912

Issue Date:

Filed:

May 21,2002

Application No. 09758940

January 10,2001

:UNDER 37 CFR 1.378(c)

Attorney Docket No. 032001-038

This is a decision on the electronic petition, filed

October 18,2010

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

October 18,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		Y DELAYED P ATENT (37 CFI	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6359803	2002-03-19	09759319	2001-01-16	ID 002111
of the actual U.S. a 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY Patentee clai	ims, or has previously	claimed, small ent	tity status. See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
● 7½ year	(1552)		○ 7½ year	(2552)
○ 11 ½ year	(1553)		○ 11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	TORY OR SIGNATO	RIES
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."
I certify, in accorda	nce with 37 CFR 1.4(c	i)(4) that I am		
An attorney	or agent registered to	oractice before the	e Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on	
The assigne	e of record of the entir	e interest		

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/SMG/	Date (YYYY-MM-DD)	2011-01-06		
Name	Steven M. Gruskin	Registration Number	36818		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6359803

Issue Date:

March 19,2002

Application No. 09759319

Filed:

January 16,2001

This is a decision on the electronic petition, filed

Attorney Docket No. 49657-898

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5

January 6,2011

,under 37 CFR 1.378(c)

year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 6,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN				
		EXPIRED P	ATENT (37 CFI	R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6339555	2002-01-15	09759358	2001-01-16	ID 002511
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
<ul><li>7 ½ year</li></ul>	(1552)		○ 7½ year	(2552)
	(1553)		○ 11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	EQUEST THAT THE [	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."
I certify, in accorda	unce with 37 CFR 1.4(c	l)(4) that I am		
An attorney	or agent registered to p	practice before the	Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petitio	on	
The assigne	e of record of the entir	e interest		

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/SMG/	Date (YYYY-MM-DD)	2011-01-06		
Name	Steven M. Gruskin	Registration Number	36818		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6339555

Issue Date:

January 15,2002

Application No. 09759358

Filed:

January 16,2001

Attorney Docket No. 49657-896

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

January 6,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 6,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HEIMLICH LAW 5952 DIAL WAY SAN JOSE CA 95129 MAILED

SEP 17 2010

OFFICE OF PETITIONS

In re Application of

Shwartz

: DECISION ON

Application No. 09/759,728

: APPLICATION FOR

Filed: January 11, 2001

Patent Number: 7,631,349

PATENT TERM ADJUSTMENT

Atty Docket No. DIGI-P001

This decision is in response to the January 13, 2010 "RENEWED REQUEST FOR REINSTATMENT OF APPLICATIONS FOR PATENT TERM ADJUSTMENT AND ADDITIONAL BASIS THEREFORE" and the "APPLICATION FOR PATENT TERM ADJUSTMENT". The Office is treating this petition as a request for reconsideration of patent term adjustment under 37 CFR 1.705(d). Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand four hundred and fifty-four (1454) or 1800 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended is GRANTED to the extent herein indicated. However, the patent term adjustment is one thousand four hundred and eighty-one (1481) days, rather than the requested one thousand four hundred and fifty-four (1454) or eighteen hundred (1800) days

Applicant appears to request this correction on the basis that the application was filed in 2001 and it did not issue until 2009. In addition, applicant also asserts that the period of time between December 18, 2007 and November 5, 2008 is additional PTA.

<sup>&</sup>lt;sup>1</sup> The Office notes that applicants filed a PTA request on January 13, 2010. The request filed on January 19, 2010 is deemed supplemental and will not be considered.

The Office finds the following:

- 1) Applicant is entitled to 883 days of "A" time pursuant to 37 CFR 1.702(a) (1). The period began on 3/12/02 and ended on 8/10/2004.
- 2) Applicant is entitled to 266 days of "A" time pursuant to 37 CFR 1.702(a) (4). The period began on 3/18/09 and ended on 12/8/2009.
- 3) Applicant is entitled to 924 days of "B" delay pursuant to 37 CFR 1.702(b). The period began on 1/12/2004, the day after the 36 month date and ended on 7/23/2006, the day before the submission of the RCE.

The Office notes that the overlapping period between "A" delay and "B" delay per  $\underline{\text{Wyeth}}$  is 212 days. The period of overlap between the "A" delays and "B" delays begins on 1/12/2004 and ends on 8/10/2004.

The Office notes that Applicant delay amounts to 380 days. Applicant on four occasions bought extensions of time and PTA was reduced pursuant to 37 CFR 1.704(b) by periods of 97, 91, 95, and 97 days.

Accordingly, the overall PTA at the time of the issuance of the patent is  $1475 \ (883 + 266 + 924 - 212 - 380)$ .

The Office notes that the period of from 12/18/2007 and 11/05/2008 is not additional PTA. The Office does not find that the period would be additional PTA pursuant to the statutory provision 35 USC 154(b) or its implementing regulations 37 CFR 1.702-1.705.

Moreover, the Office further notes that the period for "B" delay does not continue to the date of issuance of the patent if an RCE is filed in the application. Accordingly, the "B" delay would have stopped accumulating prior to applicants cited date of 20009.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The applicant is

giving one month or thirty (30) days whichever is longer as an opportunity to be heard on the grant of the certificate of correction. After the response period has elapsed, the Office will sua sponte issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand four hundred and eighty-one days (1481 days).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Maria Nuzzolillo, (571) 272-8150.

/Kery Fries/

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

## **CERTIFICATE OF CORRECTION**

: 7,631,349 B2

DATED

: December 8, 2009

Draft

INVENTOR(S): Schwartz

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [\*] Notice: under 35 USC 154(b) by (811) days

Delete the phrase "by 811 days" and insert - by 1481 days--

Day : Wednesday

Date: 9/15/2010 Time: 14:55:09



## PALM INTRANET

PTA Calculations for Application: <u>09/759728</u>						
Application	n Filing Date:	01/11/2001	PTO	Delay (	PTO):	1191
Issue D	ate of Patent:	12/08/2009		Three	Years:	0
Pre-Is	sue Petitions:	0	Applicant I	Pelay (A	PPL):	380
Post-Is	sue Petitions:	0	Tota	ıl PTA (	(days):	1481
		File Contents	History			
Date		<del></del>	<u>-</u>	PTO	APPI	START
	ADIUSTME			===		
		· · · · · · · · · · · · · · · · · · ·	- CENTION BITTO	=		
			IN PTA	1		
[12/08/2009]	CALCULAT	ION		266		74
11/11/2009	EXPORT TO	FINAL DATA CA	APTURE			
11/10/2009	DISPATCH	TO FDC				
11/10/2009	EMAIL NOT	IFICATION				
11/06/2009	MAIL-PETIT	MAIL-PETITION DECISION - DISMISSED				
11/05/2009	PETITION D	PETITION DECISION - DISMISSED				
08/12/2009	TC RETURN	TO PUBS	, , , , , , , , , , , , , , , , , , ,			
07/01/2009	PUBS CASE	REMAND TO TC				
01/27/2009	DISPATCH	ΓΟ FDC				
	APPLICATION ISSUE	ON IS CONSIDER	ED READY FOR			
11/13/2008	PETITION E	NTERED				
11/17/2008	ISSUE FEE F	AYMENT VERIF	IED			
11/17/2008	ISSUE FEE F	PAYMENT RECEI	VED			
11/07/2008	ELECTRON	IC REVIEW				
11/07/2008	EMAIL NOT	IFICATION				
11/05/2008	MAIL CORR	ECTED NOTICE	OF ALLOWANCE			
11/03/2008	CORRECTE	D NOTICE OF AL	LOWANCE			
10/27/2008	MISCELLAN	IEOUS INCOMIN	G LETTER			
09/16/2008	MISCELLAN	IEOUS INCOMIN	G LETTER			
10/09/2008	CASE DOCK	ETED TO EXAM	INER IN GAU			
02/08/2008	FINISHED II	NITIAL DATA CA	PTURE			
12/18/2007	EXPORT TO	INITIAL DATA (	CAPTURE			
	Issue D   Pre-Is     Post-Is     Post-Is     Post-Is     PTO Delay     Date     09/15/2010     11/18/2009     11/10/2009     11/10/2009     11/10/2009     11/05/2009     07/01/2009     01/27/2009     11/13/2008     11/17/2008     11/17/2008     11/05/2008     11/05/2008     11/05/2008     11/05/2008     10/27/2008     10/27/2008     10/27/2008     10/09/2008     02/08/2008	Application Filing Date:   Issue Date of Patent:   Pre-Issue Petitions:   Post-Issue Petitions:   PTO Delay Adjustment:   Date	Application Filing Date:   01/11/2001   Issue Date of Patent:   12/08/2009     Pre-Issue Petitions:   0     Pro Delay Adjustment:   670     File Contents     Date	Application Filing Date:   01/11/2001   PTO Issue Date of Patent:   12/08/2009   Pre-Issue Petitions:   0	Application Filing Date:   01/11/2001   PTO Delay (Issue Date of Patent:   12/08/2009   Three   Pre-Issue Petitions:   0	Application Filing Date:   01/11/2001   PTO Delay (PTO): Issue Date of Patent:   12/08/2009   Three Years:   Pre-Issue Petitions:   0

59

12/20/2007 ELECTRONIC REVIEW

<b>.</b> 50	المرينة بالمرات	TEMAN NOTIFICATION	ı	l I	1 1 <sup>1</sup>
	(	EMAIL NOTIFICATION			
57		EMAIL NOTIFICATION			
56		MAIL NOTICE OF ALLOWANCE			
55		MAIL EXAMINER'S AMENDMENT			<u></u>
54		ISSUE REVISION COMPLETED			
53		DOCUMENT VERIFICATION			
52	12/14/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
51	12/14/2007	CASE DOCKETED TO EXAMINER IN GAU			
50	12/10/2007	EXAMINER'S AMENDMENT COMMUNICATION			
49	12/10/2007	NOTICE OF ALLOWABILITY			
48		EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
47	11/30/2007	ELECTRONIC REVIEW			
46	11/29/2007	EMAIL NOTIFICATION			
45	11/29/2007	MAIL NON-FINAL REJECTION			
44	11/26/2007	NON-FINAL REJECTION			
43	09/05/2007	APPEAL BRIEF REVIEW COMPLETE			
42	09/05/2007	DATE FORWARDED TO EXAMINER			
41	08/15/2007	APPEAL BRIEF FILED			
40	08/15/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
39	02/15/2007	NOTICE OF APPEAL FILED		97	37
38	02/15/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
37	08/10/2006	MAIL NON-FINAL REJECTION			
36	08/07/2006	NON-FINAL REJECTION			
35	07/31/2006	DATE FORWARDED TO EXAMINER			
34	07/24/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
33		DATE FORWARDED TO EXAMINER			
32	07/24/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		91	28
31		DISPOSAL FOR A RCE / CPA / R129			
30	07/24/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	07/24/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
28	01/24/2006	MAIL FINAL REJECTION (PTOL - 326)			
27	01/22/2006	FINAL REJECTION			
26	11/17/2005	DATE FORWARDED TO EXAMINER			
25	11/08/2005	RESPONSE AFTER NON-FINAL ACTION		95	23

أ م	ll	PROVIDENT DOD DAMENICAL OF THE CO. CO.		]] II	ı
		REQUEST FOR EXTENSION OF TIME - GRANTED			
23		MAIL NON-FINAL REJECTION			
22	05/03/2005	NON-FINAL REJECTION			
21	02/23/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	10/01/2002	REFERENCE CAPTURE ON IDS			
19	02/12/2001	REFERENCE CAPTURE ON IDS			
18	02/23/2005	DATE FORWARDED TO EXAMINER			
17	02/15/2005	RESPONSE AFTER NON-FINAL ACTION		97	13
16	02/15/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
14	11/16/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	08/10/2004	MAIL NON-FINAL REJECTION	883		-1
12	08/09/2004	NON-FINAL REJECTION			
11	07/28/2004	CORRESPONDENCE ADDRESS CHANGE			
10	06/22/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	07/03/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	03/20/2003	CORRESPONDENCE ADDRESS CHANGE			
7.7	10/01/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	10/01/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	09/13/2002	CASE DOCKETED TO EXAMINER IN GAU			
5.7		INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5		INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
4	02/26/2001	APPLICATION DISPATCHED FROM OIPE			
3	02/22/2001	CORRESPONDENCE ADDRESS CHANGE			
2	01/30/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/11/2001	INITIAL EXAM TEAM NN			

Search Another: Application# Search

## **EXPLANATION OF PTA CALCULATION**

## **EXPLANATION OF PTE CALCULATION**

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Back to OASIS | Home page



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6976628

Issue Date: December 20,2005

:DECISION GRANTING PETITION Application No. 09759875 :UNDER 37 CFR 1.378(c)

January 12,2001 Filed:

Attorney Docket No. P1329USA

September 7,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 7,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

#### Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number. PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c)) Issue Date Application Filing Date Patent Number Docket Number (if applicable) (YYYY-MM-DD) (YYYY-MM-DD) Number 6976628 2005-12-20 09759875 2001-01-12 P1329US CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d). SMALL ENTITY Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g) Small Entity **NOT Small Entity** Code Fee Code Fee 3 1/2 year (2551)3 ½ year (1551)7 ½ year (2552)(1552)7 ½ year (2553)11 1/2 year 11 1/2 year (1553)SURCHARGE The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee. MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition. STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES 37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest." I certify, in accordance with 37 CFR 1.4(d)(4) that I am An attorney or agent registered to practice before the Patent and Trademark Office A sole patentee A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees. A joint patentee; all of whom are signing this e-petition The assignee of record of the entire interest

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Brian C. Rupp/	Date (YYYY-MM-DD)	2011-09-07		
Name	Brian C. Rupp	Registration Number	35665		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

MICHAEL BEST & FRIEDRICH LLP 100 EAST WISCONSIN AVENUE SUITE 3300 MILWAUKEE, WI 53202-4108

MAILED

DEC 05 2011

**OFFICE OF PETITIONS** 

In re Patent No.

6,725,180

Issue Date: April 20, 2004

Application No. 09/759,890

Filed: January 12, 2001

Attorney Docket No. 047177-9268-US00

**DECISION ON PETITION** 

This is a decision on the petition under 37 CFR 1.182, filed November 14, 2011, to expunge an assignment previously recorded against the above-identified application.

The petition is dismissed. This is not a final agency action.

Petitioner indicates that multiple versions of the same assignment were recorded (one dated and one undated version) and that the undated assignment, recorded October 17, 2011 at Reel/Frame 027069/0856 and its associated Notice of Recordation of Assignment, should be expunged to avoid confusion for the assignee in future financing transactions.

As discussed in section 323.01 (d) of the Manual of Patent Examining Procedure (MPEP), petitions to correct, modify or "expunge" assignment records are granted only if the petitioner can prove that:

- (A) the normal corrective procedures outlined in MPEP § 323.01(a) through §323.01(c) will not provide the petitioner with adequate relief; and
- (B) the integrity of the assignment records will not be affected by granting the petition.

In regard to A, while petitioner indicates that the presence of a undated and dated copy of the assignment would lead to confusion, it is noted that the filings of the dated version of the assignment, recorded on October 27, 2011 at Reel/Frame 027131/0189 and the recordation of the security interest on October 20, 2011 at Reel/Frame 027091/0111 were procedures used to correct the error of the undated assignment of October 17, 2011.

In regard to B, petitioner has not sufficiently explained how the removal of a document in its entirety will not affect the assignment records. The removal of a document in its entirety will affect the assignment records. The integrity of the records is recognized as separate from the chain of title, and the USPTO endeavors to maintain a complete history of claimed interests in a given property to permit, among other things, the review of matters like chain of title by a competent authority.

Moreover, petitioner seeks an extraordinary remedy, properly addressed under 37 CFR 1.182. The USPTO will not normally resort to an extraordinary remedy under 37 CFR 1.182 if the rules of practice and the procedures before the USPTO already provide an avenue for the requested relief. See <u>Cantello v. Rasmussen</u>, 220 USPQ 664, (Comm'r Pats. 1982).

As set forth in MPEP 323, an error in a recorded assignment is not corrected by expunging the previous document, but by simply submitting a "corrective document". The "corrective document" must include 1) a copy of the original assignment document with the corrections made therein. The corrections must be initialed and dated by the party conveying the interest; and 2) a new Recordation Form Cover Sheet (form PTO-1595). The new recordation form cover sheet must identify the submission as a "corrective document" submission and indicate the reel and frame number where the incorrectly recorded assignment document appears. The person signing the new recordation form cover sheet must state that the information provided on the new cover sheet is true and correct and that any copy submitted is a true copy of the original document. The original cover sheet should be submitted with the corrective document. The corrective document will be recorded and given a new reel and frame number and recording date. The recording fee set forth in 37 CFR 1.21(h) is required for each patent application and patent against which the corrective document is being recorded. See MPEP § 302.06. Corrections may be made on the original assignment document, for example, by lining out an incorrect patent or application number in a merger or change of name (see MPEP §314). Given that the petitioner has corrected the assignment, the petition to expunge a previously recorded assignment is dismissed.

As background, the USPTO simply acts in a ministerial capacity in recording documents that have been submitted for recordation. See 35 USC 261 and 37 CFR 3.11. However, the recording of a document pursuant to 37 CFR 3.11 is not a determination by the USPTO of the validity of the document per se or the effect that document has on the title to a patent or application. See 37 CFR 3.54. Moreover, it is USPTO policy to maintain a complete history of claimed interests in a given property, and, as such, a recorded assignment document will be retained, even if it is subsequently found to be invalid. In re Raney, 24 USPQ2d 1713 (Comm'r Pat. 1992).

Telephone inquiries concerning this communication should be directed to Joanne Hama at (571) 272-2911 or in her absence, the undersigned at (571) 272-7099.

Petitions Examiner
Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

HENNEMAN & ASSOCIATES, PLC 70 N. MAIN ST. THREE RIVERS MI 49093

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OFFICE OF PETITIONS

In re Application of David N. Harris

Application No. 09/760,271

Filed: 01/12/2001

Attorney Docket No. 0013-011P1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on October 6, 2011, to revive the above-identified application.

This application became abandoned as a result of the decision of June 29, 2011 by the Board of Patent Appeals and Interferences and because the period for seeking court review of the decision has expired and there are no allowed claims. The Office mailed a Notice of Abandonment on September 8, 2011.

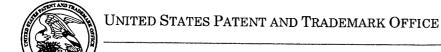
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an RCE and a submission; (2) the petition fee; and (3) an appropriate statement of unintentional delay. Accordingly, the petition is **granted**.

This matter is being referred to Technology Center Art Unit 3682.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

C. J. Donule Christina Tartera Donnell

Senior Petitions Attorney
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

October 31, 2011

Orville R. Cockings Lerner, David, Littenberg, Krumholz & Mentlik, LLP 600 South Avenue West Westfield, NJ 07090

Patent No.

: 6,456,075 B1

Appl. No.

: 09/761,160

Inventor(s)

: Timothy Damadian, et al.

Issued

: September 24, 2002

Title

: MRI MAGNET WITH ENHANCED PATIENT ENTRY AND POSITIONING

Docket No.

: DAMADIAN 3.0-065 II DIV

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing <u>incorrect or erroneous</u> assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A petition to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1.117(h) (currently \$130);
- <u>B.</u> a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- <u>C.</u> a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents

Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

**Customer Service Window** 

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/ Virginia Tolbert For Mary F. Diggs Decisions & Certificates of Correction Branch (571) 272-0460

vt .



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DEAN A. CRAINE, P.S. **SUITE 140** 400 - 112TH AVE. NE **BELLEVUE WA 98004** 

MAILED

MAY 1 9 2011 OFFICE OF PETITIONS

In re Patent No. 6,416,206

Issue Date: July 09, 2002

Application No. 09/761,334

Filed: January 16, 2001

Attorney Docket No. LEEM 160

**DECISION ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed March 29, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on July 09, 2010 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy Petitions Examiner

Office of Petitions

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DE	Docket Number (if applicable)			
6974833	2005-12-13	09761395	2001-01-16	RIPLLC018.007US1			
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	application leading to is	ssuance of that pa	tent to ensure the	dentify: (1) the patent number and (2) the application number ee(s) is/are associated with the correct patent. 37 CFR			
LOSS OF ENTITLI	ims, or has previously  EMENT TO SMALL EN  no longer entitled to sm	ITITY STATUS					
NOT Small Entity			Small Entity				
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ yea				
11 ½ year	, ,		11 ½ ye	ar (2553)			
SURCHARGE The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.							
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.							
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL							
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED							
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES							
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."							
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
An attorney	or agent registered to	oractice before the	Patent and Trade	mark Office			
A sole pater							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; all of whom are signing this e-petition							
The assignee of record of the entire interest							

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Geeta Kadambi/	Date (YYYY-MM-DD)	2011-06-16			
Name	GEETA KADAMBI	Registration Number	64446			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
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- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
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- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6974833

Issue Date:

December 13,2005

Application No. 09761395

Filed:

January 16,2001

Attorney Docket No. 11965/46001

to accept the unintentionally delayed payment of the 3.5

June 16,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

year maintenance fee for the above-identified patent.

:UNDER 37 CFR 1.378(c)

The petition is **GRANTED**.

June 16,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.





COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Paper No. //

LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE WA 99201

In re Application of: John M. Snyder, et al. Application No. 09/761,558 Filed: January 16, 2001

For: SAMPLING-EFFICIENT MAPPING OF

**IMAGES** 

MAIL

NOV 1 0 2004

DIRECTOR OFFICE TECHNOLOGY CENTER 2600 DECISION ON PETITION

This is a decision on the request filed on August 23, 2004 which is treated as a Petition to Withdraw the Holding of Abandonment pursuant to MPEP §711.03 and 37 C.F.R. §1.181. No fee is required.

#### The petition is granted.

This application became abandoned for failure to timely file a response to the restriction requirement mailed November 4, 2003, which set a shortened statutory period of one (1) month to reply. A Notice of Abandonment was mailed on September 7, 2004.

Petitioner alleges to have timely filed a proper response to the non-final Office action mailed July 2, 2003. In support, petitioner has provided as evidence, a copy of said response, a petition for extension of time, and a transmittal letter itemizing a 43 page transmission which included a Certificate of Facsimile Transmission dated December 22, 2003. Also included with the response is a copy of an Auto-Reply Facsimile Transmission indicating that a 43-page document from Petitioner was received in the U.S. Patent and Trademark Office on December 22, 2003.

#### 37 C.F.R. § 1.8 Certificate of mailing or transmission states in part:

- (a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
  - (1) Correspondence will be considered as being timely filed if:
    - (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
      - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
      - (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
    - (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated. [emphasis added]

Application Serial No.: 09/761,558

Decision on Petition

Although Petitioner is not the one who executed the certificate of transmission and there is no personal statement from the person who signed the certificate of transmission, the Auto-Reply Facsimile Transmission report is evidence that the documents were in fact transmitted to the Office. Accordingly, it is deemed that the original response was received on December 22, 2003 and subsequently misplaced.

The non-final Office action was mailed July 2, 2003, setting a 3 month shortened statutory time period for response which expired October 2, 2003. Applicant's response of December 22, 2003 required a three month extension of time to be considered timely filed. The petition for extension of time which accompanied the subject petition, only requested a two month extension of time. However, Applicant also checked the box which stated "The Commissioner is hereby authorized to charge any fees which may be required...".

#### 37 CFR 1.136(a) (3) provides that:

An authorization to charge <u>all required fees</u>, fees under 37 CFR 1.17, or all required extension of time fees <u>will be treated as a constructive petition for an extension of time</u> in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. [emphasis added]

Given that Petitioner has successfully demonstrated the receipt of the response within the U.S. Patent and Trademark Office on December 22, 2003 and appropriate authorization was given and the required three (3) month extension of time fee has been charged to Applicant's account, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The application file is being forwarded to the technical support staff for entry of the copy of the original response which accompanied the subject petition. Thereafter, the application will be forwarded to the Examiner for appropriate action in due course.

Dwayne D. Bost Special Program Examiner

Technology Center 2600

Communications



COMMISSIONER FOR PATERTY, UNITED STATES PATERTY AND TRACEMENT OF A COMMISSION AND ASSOCIATION OF A COMMISSION OF A COMMISSION

# Papa COPY MAILED

LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201

FEB 1 3 2002

OFFICE OF PETITIONS

In re Application of Snyder, et al.
Application No. 09/761,558
Filed: January 16, 2001
Attorney Docket No. MS1-531US For: SAMPLING-EFFICIENT MAPPING OF IMAGES

DECISION ACCORDING STATUS UNDER 37 CFP. 1.47(a)

This is in response to the petition under 37 CFR 1.47(a) filed September 27, 2001.

The petition is **GRANTED**.

Petitioner has shown that inventor Don P. Mitchell has refused to join in the filing of the above-identified application after having been presented with the application

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be returned to the Office of Initial Patent Examination for issuance of a corrected filing receipt.

Deposit account No. 12-0769 has been charged an additional \$130.00, the required petition fee, as authorized in the fee transmittal accompanying the instant petition.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Deverly M. Flanagan

Supervisory Petitions Examiner Office of Petitions Office of the Deputy Commissioner for Patent Examination Policy



COMMISSIONER FOR PLIFRI'S UNITED STATES PATENT AND TRADEMARY OFFICE WASHINGTON, D. D. C.C.F. WWW.SCC.C.C.

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FEB 1 3 2002

OFFICE OF PETITIONS

DON P. MITCHELL 2621 168TH AVENUE NE BELLEVUE, WA 98008

In re Application of Snyder, et al. Application No. 09/761,558 Filed: January 16, 2001 Attorney Docket No. MS1-531US For: SAMPLING-EFFICIENT MAPPING OF IMAGES

LETTER

Dear Sir:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 C.F.R. § 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost as per 37 C.F.R. § 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. § 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

CC: LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

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PETER GIBSON
PATENTS PENDING
VIA DEL MUSCHIO 12/2
CASTIGLIONE D. PESCAIA, 58043- GR
ITALY

OCT 1 9 2010
OFFICE OF PETITIONS
Paper No. 11

In re Patent No. 6,463,541

Issue Date: October 8, 2002

Application No. 09/761,748

Filed: January 18, 2001

Attorney Docket No.

ON PETITION

This is a decision on the petition, filed February 23, 2010, which is properly treated as a petition under 37 CFR 1.378(b) to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

#### The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, the Commissioner will undertake no further reconsideration or review of the matter.

The patent issued October 8, 2002. The first (3 1/2 year) maintenance fee was due October 8, 2006, and could have been paid from October 8, 2005 through April 8, 2006, or with a surcharge during the period from April 9, 2006 through October 8, 2006. Accordingly, the patent expired at midnight October 8, 2006, for failure to timely submit the third maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). This petition lacks items (1), (2), and (3) above.

Petitioner asserts that notification of a maintenance fee due was never received because it was mailed to an incorrect address and thus failure to pay the maintenance fee due was unavoidable.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

37 CFR 1.378(b)(3) states that any petition to accept delayed payment of a maintenance fee must include:

"A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly."

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995) (quoting <u>In re Patent No. 4,409,763</u>, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd dub nom. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the maintenance fee for this patent. Id. As the patent holder at the time of expiration, it was incumbent on petitioner to have itself docketed this patent for payment of the maintenance fee in a reliable system as would be employed by a prudent and careful person with respect to his most important business, or to have engaged another for that purpose. See California Medical Products v. Technol Med. Prod., 921 F.Supp. 1219, 1259 (D.Del. 1995). Even where another has been relied upon to pay the maintenance fees, such asserted reliance per se does not provide a petitioner with a showing of unavoidable delay within the meaning of 37 CFR § 1.378(b) and 35 USC § 41(c). Id. Rather, such reliance merely shifts the focus of the inquiry from the petitioner to whether the obligated party acted reasonably and prudently. Id. Nevertheless, a petitioner is bound by any errors that may have been committed by the obligated party. Id.

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, supra. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and

Patent No. 6,463,541 Page 3

republished in the Official Gazette at Off. Gaz Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying maintenance fee from patentee to the Office. See MPEP 2590.

Accordingly, petitioner's argument that the failure of the Office to issue a Certificate of Correction as to the inventors residence address on the patent is not to the point. Moreover, a Maintenance Fee Reminder is not sent to the inventors residence address, it is sent to the Fee address for maintenance fee purposes in accordance with 37 CFR 1.363. See MPEP 2540.

The record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of petitioner to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement therein for petitioner's showing of the steps taken to pay the fee. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. In the absence of a showing of the steps taken by or on behalf of petitioner, 37 CFR 1.378(b)(3) precludes acceptance of the maintenance fee.

Furthermore, the Letters Patent contains a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980. Accordingly, a reasonably prudent patentee would have inquired to see if his/her patent was subject to maintenance fees.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By Hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-7099.

Petitions Examiner
Office of Petitions



# UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 223/33-1450

Leason Ellis LLP 81 Main Street Suite 503 White Plains NY 10601 Paper No. 14

MAILED

MAR 04 2011

OFFICE OF PETITIONS

REQUEST FOR INFORMATION

In re Patent of Suzuki et al. Patent No. 6,561,716

Issue Date: May 13, 2003 Application No. 09/762,319

Filed: February 6, 2001

Attorney Docket No. M1596-232/ 4400/800-

001

A petition under 37 CFR 1.378(b) to accept the delayed payment of two maintenance fees for the above-identified patent was filed on November 11, 2010.

Petitioner should submit the requested items within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

37 CFR 1.378(b) provides that any petition to accept the delayed payment of a maintenance fee must include the following:

- (1) the required maintenance fee set forth in 37 CFR 1.20(e) (g);
- (2) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

The Office of Petitions attempted to collect the \$980.00 small entity 3 ½ year maintenance fee, the 2,480.00 7 ½ year small entity maintenance fee, and the \$700.00 surcharge. However, the authorized user and/or company is not listed on the account.

Until the required maintenance fees and surcharge are paid, the merits of the petition will not be addressed.

Further correspondence with respect to this matter should be addressed as follows:

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www.uspto.gov/ebc/efs\_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Senior Petitions Attorney

Mure Wille Blankley

Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Leason Ellis LLP 81 Main Street Suite 503 White Plains NY 10601

**MAILED**MAY 2 7 2011

OFFICE OF PETITIONS

In re Patent of Suzuki et al.

Patent No. 6,561,716

Issue Date: May 13, 2003 : ON PETITION

Application No. 09/762,319

Filed: February 6, 2001

Attorney Docket No. M1596-232/ 4400/800-

001

This is a decision on the petition under 37 CFR 1.378(b), filed April 5, 2011, to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

#### The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, the Director will undertake no further reconsideration or review of the matter.

The patent issued May 13, 2003. The 3 ½ year maintenance fee could have been paid from May 13, 2006 through November 13, 2006, or with a surcharge during the period from November 14, 2006 through May 13, 2007. The 3 ½ year maintenance fee was not timely paid. Accordingly, the patent expired on May 14, 2007.

#### Statute and Regulation

37 CFR 1.378(a) provides that the Director may accept the payment of any maintenance fee due on a patent based on an expiration of the patent, if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable or unintentional. The appropriate surcharge set forth in § 1.20(I) must be paid as a condition of accepting payment of the maintenance fee. The surcharges set at 37 CFR 1.20(i) are established pursuant to 35 U.S.C. 41(c) and, therefore, are not subject to small entity provisions of 35 U.S.C.

41(h). No separate petition fee is required for this petition. If the Director accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired but will be subject to the intervening rights and provisions of 35 U.S.C. 41(c)(2).

The patent statute at 35 U.S.C. 41(c)(1) provides as follows:

"The Director may accept the payment of any maintenance fee required by subsection (b) of this section... at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable."

The statute's promulgating rule, 37 CFR 1.378(b), provides that any petition to accept the delayed payment of a maintenance fee must include the following:

- (1) the required maintenance fee set forth in 37 CFR 1.20(e) (g);
- (2) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Such as statement must be verified if made by a person not registered to practice before the Patent and Trademark Office. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

#### **Opinion**

In the instant petition, assignee, Kabushiki Kaisha Somic Ishikawa, asserts that the delay in payment of the 3 ½ year maintenance fee was unavoidable because assignee relied upon a reputable law firm to timely pay the 3 ½ year maintenance fee for the patent. Kabasawa & Associates handled the patent affairs for the assignee in Japan and had engaged Darby & Darby to be responsible for paying the assignee's maintenance fees in the U.S. By May 21, 2006, Kabasawa had informed Darby that the maintenance fee for the above-identified patent should be paid. One of Darby's paralegals, Perry Moy, was assigned to handle the payment. He updated the docketing system to indicate that payment had been made. On July 27, 2006. He notified accounting of the payment. As a result, an invoice was issued on August 31, 2006 to Kabasawa for payment of the fee. However, Mr. Moy forgot to notify MDC, the maintenance fee company used by Darby, that they should effect payment of the fee.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3). This petition lacks an adequate showing that the delay was unavoidable.

Petitions for the delayed payment of maintenance fees under 35 U.S.C. 41(c)(1) are treated under the same standard as petitions for revival of abandoned applications under 35 USC 133 because both statutory provisions use the same language, i.e., "unavoidable" delay. Ray v. Leyman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd, Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable as follows:

The word 'unavoidable'....is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt. 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-168 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Massinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). The requirement in 35 U.S.C. 133 for a showing of unavoidable delay requires not only a showing that the delay which resulted in the abandonment of the application was unavoidable (or expiration of the patent as it applies to 35 U.S.C. 41(c)(1)), but also a showing of unavoidable delay from the time an applicant becomes aware of the abandonment of the application until the filing of a petition to revive (or a petition under 37 CFR 1.378(b) to reinstate the patent under 35 U.S.C. 41(c)(1)). See In re Application of Takao, 17 USPQ2d 1155 (Comm'r Pat. 1990). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-317, 5 USPQ2d 1130, 1131-1132 (N.D. Ind. 1987).

35 U.S.C. 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133. In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F.3d at 609-609, 34 USPQ2d at 1787.

Reliance per se on a third party for tracking a maintenance fee does not provide a patent holder with a showing of unavoidable delay within the meaning of 37 CFR 1.378(b) and 35 U.S.C.

41(c). Rather, such reliance merely shifts the focus of the inquiry from patent holder to whether that third party acted reasonably and prudently. In any event, the patent holder is bound by any errors that may have been committed by their representatives. See California Medical Products v. Technology Med. Prod., 921 F. Supp. 1219 (D.Del. 1995). The patent owner chose to rely upon Darby & Darby for monitoring and payment of the maintenance fee. The patent holder is bound by any errors that may have been committed by Darby & Darby

Petitioner asserts that docketing error was the cause of delay in acting to prevent the patent from becoming expired. A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that: (1) the error was the cause of the delay at issue; (2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; (3) and the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. See MPEP 711.03(c)(III)(C)(2).

An adequate showing requires statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts, as they know them. Petitioner must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person(s) responsible for the maintenance of the system. This showing must include copies of mail ledger, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing, and include an indication as to why the system failed in this instance to provide adequate notice that a reply was due.

What was Darby & Darby's system for docketing and paying maintenance fees? Mr. Moy annotated the database to indicate the fee was paid on July 27, 2006. He notified the Darby & Darby accounting department of payment. As a result, an invoice dated August 31, 2006 was mailed to the assignee. The assignee purportedly paid Darby & Darby. However, Mr. Moy forgot to notify MDC, the maintenance fee company used by Darby, that they should effect payment of the fee.

Was it typical docketing practice to enter payment was made prior to prepayment to Darby & Darby of the fee by the client or confirmation that an annuity company had made payment to the USPTO? What procedures should Mr. Moy have followed? What kind of auditing trail should a "normal" docket entry have created? Were there any abnormalities in the docketing trail due to Mr. Moy's departure in docketing practice that should have been noticed by other Darby & Darby employees?

Did Darby & Darby have contractual relationships with MDC with respect to payment of maintenance fees for other patents? What kind of paper trail was created when Darby & Darby contracted with MDC for payment of a maintenance fee? What kind of annotation, if any, should have been in Darby & Darby's records? If Darby & Darby had a contract for payment of maintenance fees for this patent, did MDC send a written request for instructions to Darby &

Darby about payment of the maintenance fee? Did MDC send reminder notices when no instructions were received?

Petitioner must also supply information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks. How much experience did Mr. Moy have with docketing? The record does not show that Darby was reasonable and prudent in relying on the agencies and instrumentalities of Mr. Perry Moy. It must be established that reliance upon Mr. Moy represented the exercise of due care on the part of Darby & Darby.

Pursuant to petitioner's authorization, deposit account no. 50-4570 is being charged the \$700.00 surcharge after expiration – Late payment is unavoidable, the \$980.00 3 ½ year maintenance fee, and the \$2,480.00 7 ½ year maintenance fee.

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund of the \$3460.00 in maintenance fees and the \$700.00 surcharge submitted with the petition. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION

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Alexandria, VA 22313-1450

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By internet: EFS-Web

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at (866) 217-9197)

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shuru Walles Brankley
Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

# SPE RESPONSE FOR CERTIFICATE OF CORRECTION

		Раро	er No.:20101008
DATE	: October 27, 2010		
TO SPE OF	: ART UNIT 3634		
SUBJECT	: Request for Certificate of Correct	ction on Patent No.: 6,422,291	
A response is	requested with respect to the accomp	panying request for a certificate of	correction.
Certificates	lete this form and return with file, v of Correction Branch - PK 3-910 n 7590 - Tel. No. 305-8201		
read as showr	o the change(s) requested, correcting in the certificate of correction? No note that the claims be changed.		
Thank You F	For Your Assistance	Certificates of Correction	n Branch
	for issuing the above-identified on the appropriate box.	correction(s) is hereby:	
⊠Ар	proved	All changes apply.	
□Ар	proved in Part	Specify below which changes do	<b>not</b> apply.
☐ De	nied	State the reasons for denial below	<b>v</b> .
Comments:			
		SPE: /Katherine Mitchell/	Art Unit 3634

#### SPE RESPONSE FOR CERTIFICATE OF CORRECTION

•		Paper No.:
DATE	9/8/10	

TO SPE OF : ART UNIT \_\_\_\_\_ 3634 (3600)

SUBJECT : Request for Certificate of Correction for Appl. No.: <u>09/762,374</u> Patent No.: <u>6,422,291</u>

Please respond to this request for a certificate of correction within 7 days.

#### FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code COCX.

#### FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Randolph Sq. Ste 9D62A

703-756-1590

#### Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:  Note your decision on the appropriate box.					
Approved	All changes apply.				
☐ Approved in Part	Specify below which changes do not apply.				
☐ Denied	State the reasons for denial below.				

SPE BHUND MITHELL ART UNIT 3634

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OFFICE OF PETITIONS

## BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA VA 22313-1404

In re Patent No. 6,770,674

Issue Date: August 3, 2004

Application No. 09/762,585 : ON PETITION

Filed: February 9, 2001

Attorney Docket No. 032642-004

This is a decision on the petition under 37 CFR 1.378(c), filed May 21, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

#### The petition is **GRANTED**.

This patent expired on August 4, 2008, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions

cc: Harvey B. Jacobson, Jr.

400 Seventh Street, NW, Suite 600 Washington, DC 20004-2218

#### UNITED STATES PATENT AND TRADEMARK OFFICE



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RABIN & BERDO, PC 1101 14TH STREET, NW SUITE 500 WASHINGTON DC 20005

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JUL 05 2011

OFFICE OF PETITIONS

In re Patent No. 6,548,687

Issue Date: April 15, 2003 Application No. 09/763,176

Filed: February 20, 2001

Attorney Docket No. BEI-101NP

REQUEST FOR INFORMATION

This request for information is mailed in response to the petition under 37 CFR 1.378(b), filed May 13, 2011 (certificate of mailing date May 6, 2011), to accept the delayed payment of a maintenance fee for the above-identified patent.

Please respond within TWO (2) MONTHS from the mail date of this request for information. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The merits of this petition will not be addressed because the person signing the petition has not established his authority to file the petition. As stated in MPEP 2590,, "If the petition is signed by a person not registered to practice before the Office, the petition must indicate that the person signing the petition is the patentee, assignee, or other party in interest. An assignee must comply with the requirements of 37 CFR 3.73(b) which is discussed in MPEP § 324." (emphasis added)

Petitioner has not complied with the requirements of 37 CFR 3.73(b).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

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Alexandria, VA 22313-1450

By hand:

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www.uspto.gov/ebc/efs\_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

Telephone inquiries should be directed to the undersigned at (703) 571-3230.

Shirene Willis Brantley
Senior Petitions Attorney

Office of Petitions

CC: JACKSON WEN

MOTHERLAND INTERNATIONAL, INC.

1871 WRIGHT AVENUE LA VERNE CA 91750



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

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SEP 1 5 2011
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CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON DC 20044-4300

In re Application of

Sherar et al.

Application No. 09/763183

Filing or 371(c) Date: 05/08/2001 : ON PETITION

Patent No. 6511430 :

Issue Date: 01/28/2003 : Title of Invention: :

USE OF HIGH FREQUENCY :

ULTRASOUND IMAGING TO DETECT:
AND MONITOR THE PROCESS OF:
APOPTOSIS IN LIVING TISSUES, EXVIVO TISSUES AND CELL-CULTURE:

This is a notice regarding request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

The Power of Attorney filed with the petition has NOT been entered because there is no evidence that the person signing the Power of Attorney is authorized to act on behalf of the assignee.

Here, petitioner has submitted a statement pursuant to 37 CFR 3.73(b), stating that Joan M. Van Zant is authorized to act on behalf of the assignee. However, the Power of Attorney is signed by Michael Julius. See, 37 CFR 3.73 and the MPEP 324.

Patent No. 6511430 Page 2

Before the POA and Change of Correspondence Address may be entered, evidence of the authority of the person signing the POA is required.

A review of the petition reveals that the address appearing on the petition differs from the correspondence address of record. Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

CC: NORTON ROSE OR LLP
1, PLACE VILLE MARIE
SUITE 2500
MONTREAL, CANADA H3B 1-R1



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON DC 20044-4300 MAILED
SEP 16:2011
OFFICE OF PETITIONS

ON PETITION

In re Application of

Sherar et al.

Application No. 09/763183

Filing or 371(c) Date: 05/08/2001

Patent No. 6511420

Patent No. 6511430

Issue Date: 01/28/2003

Title of Invention:

**USE OF HIGH FREQUENCY** 

ULTRASOUND IMAGING TO DETECT

AND MONITOR THE PROCESS OF

APOPTOSIS IN LIVING TISSUES, EX-

VIVO TISSUES AND CELL-CULTURE

This is a decision on the petition under 37 CFR § 1.378(c), filed August 25, to reinstate the above-identified patent.

#### The petition is **GRANTED**.

The patent issued January 28, 2003. The grace period for paying the seven and one-half (7½) year maintenance fee expired January 28, 2011. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

The Power of Attorney filed with the petition has NOT been entered because there is no evidence that the person signing the Power of Attorney is authorized to act on behalf of the assignee.

Here, petitioner has submitted a statement pursuant to 37 CFR 3.73(b), stating that Joan M. Van Zant is authorized to act on behalf of the assignee. However, the Power of Attorney is signed by Michael Julius. See, 37 CFR 3.73 and the MPEP 324.

Before the POA and Change of Correspondence Address may be entered, evidence of the authority of the person signing the POA is required.

Patent No. 6511430 Page 2

A review of the petition reveals that the address appearing on the petition differs from the correspondence address of record. Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

The file is being forwarded to the files repository.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

CC: NORTON ROSE OR LLP
1, PLACE VILLE MARIE
SUITE 2500
MONTREAL, CANADA H3B 1-R1

TO SPE OF : Request for Certificate of Correction for Appl. No/09/764164 /pat. 6886049  Please respond to this request for a certificate of correction within 7 days.  FOR IFW FILES:  Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.  Please complete the response (see below) and forward the completed response to scanning document code COCX.  FOR PAPER FILES:  Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:  Certificates of Correction Branch (CofC) Randolph Square – 9D10-A Palm Location 7580  Magdalene Talle  Certificates of Correction Branch 571-272-0423  Thank You For Your Assistance  The request for issuing the above-identified correction(s) is hereby:  Note your decision on the appropriate box.  Approved  All changes apply.  Specify below which changes do not apply.  Denied  State the reasons for denial below.	The state of the s	SPE RESPONSE	FOR CERTIFICATE OF CORRECTION
Please respond to this request for a certificate of correction within 7 days.  FOR IFW FILES:  Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.  Please complete the response (see below) and forward the completed response to scanning document code COCX.  FOR PAPER FILES:  Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:  Certificates of Correction Branch (CofC)  Randolph Square – 9D10-A  Palm Location 7580  Magdalene Talle  Certificates of Correction Branch  571-272-0423  Thank You For Your Assistance  The request for issuing the above-identified correction(s) is hereby:  Note your decision on the appropriate box.  Approved  All changes apply.  Specify below which changes do not apply.  Denied  State the reasons for denial below.	DATE		
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Comments:	Comment	s:	
			2116

DATE : September 13, 2010	ISE FOR CERTIFICATE OF CORRECTION
TO SPE OF : ART UNIT 2116 SUBJECT : Request for Certificate of	
ranguest for certificate of (	Correction for Appl. No <u>(09/764164/pat. 6886049</u>
Please respond to this request for a 7 days.	a certificate of correction within
FOR IFW FILES:	
Please review the requested chang the IFW application image. No new meaning of the claims be changed.	ges/corrections as shown in the <b>COCIN</b> document(s) in w matter should be introduced, nor should the scope or
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Certificates of Correction B Randolph Square – 9D10-A Palm Location 7580	Branch (CofC)
	Magdalene Talley
	Cadilland
	Certificates of Correction Branch
	Certificates of Correction Branch 571-272-0423
Thank You For Your Assistance	571-272-0423
Thank You For Your Assistance  The request for issuing the above- Note your decision on the appropriate box.	571-272-0423
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MASSACHUSETTS GENERAL HOSPITAL THE GENERAL HOSPITAL CORPORATION PERKINS COLE LLP 700 13<sup>TH</sup> STREET, NW, SUITE 600 WASHINGTON DC 20005-3960

MAILED

MAY 1.7 2011

OFFICE OF PETITIONS

In re Application of

MERRILL, et al

Application No. 09/764,445

Filed: January 19, 2001 :

Attorney Docket No. 00952-8033

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 23, 2011, to revive the above-identified application.

#### The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 19, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is August 20, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitions have supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) a statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1765 for processing by the Examiner in the normal course of business.

/Diane C. Goodwyn/ Diane C. Goodwyn Petitions Examiner Office of Petitions Doc Code: PET.PTA.RCAL

**Document Description: Request for Recalculation in view of Wyeth** 

Approved for use through 02/28/2011. OMB 0651-0020

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH\*

Attorney Docket Patent Number: 7,668,176 Chuah 54 (MC)-US-NP Number: Filing Date Issue Date: February 23, 2010 (or 371(b) or (f) Date): January 18, 2001

First Named Inventor:

Mooi Choo Chuah

Title: Universal mobile telecommunications system (UMTS) quality of service (QoS) supporting variable QoS negotiation

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

\*Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /Gregory J. Murgia/	Date August 10, 2010
Name (Print/Typed) Gregory J. Murgia	Registration Number 41,209

Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature,

\*Total of \_\_\_\_ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 08/17/2010

WALL & TONG, LLP/ ALCATEL-LUCENT USA INC. 25 James Way Eatontown, NJ 07724

Applicant : Mooi Choo Chuah

Patent Number : 7668176 Issue Date : 02/23/2010 **Application No:** 09/764,510

Filed : 01/18/2001 : DECISION ON REQUEST FOR : RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW : OF WYETH AND NOTICE OF INTENT TO

: ISSUE CERTIFICATE OF CORRECTION

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be 2126 days. The USPTO will sua sponte issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

Alexandria, VA 22313-1450 www.uspto.gov

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UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG WEST S. WING ENGLEWOOD CLIFFS NJ 07632-3100

OFFICE OF PETITIONS

In re Application of

Johnson et al.

Application No. 09/764,734

Filed: December 21, 2005

Attorney Docket No. 088245-3188

PETITION DECISION

This is a decision on the Petition for Filing a Corrected Declaration by Other Than All the Inventors, filed June 23, 2010, which is being treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.64. This is also a decision on the Request to Add an Inventor under 37 CFR 1.48(a).

The petition under 37 CFR 1.183 is **GRANTED**.

Petitions under 37 CFR 1.47 are only applicable to the initial execution of an original oath or declaration by a given inventor and are not applicable to the reexecution of another or supplemental oath or declaration by that originally signing inventor. In such circumstances, the USPTO will consider a petition under 37 CFR 1.183 requesting waiver of the requirement of 37 CFR 1.64 that each of the actual inventors execute the supplemental oath or declaration, particularly where assignee consent is given to the requested correction. Absent assignee consent, the petition under 37 CFR 1.183 requesting waiver of the reexecution of the oath or declaration will be evaluated as to whether the nonsigning inventor was actually given the opportunity to reexecute the oath or declaration, or whether the nonsigning inventor could not be reached. In essence, petitioner must show that the inability to again obtain the signature statement from originally signing inventor Paula Ann Johnson is, notwithstanding the exercise of reasonable care and diligence, due to circumstances beyond her control.

Petitioner states that the nonsigning inventor, Paula Ann Johnson, has not responded to multiple attempts to contact her. However, in January 2010, Paula Ann Johnson signed a Statement under 37 CFR 1.324(b)(2) to Correct the Inventorship without returning the Declaration. As such, the petition under 37 CFR 1.183 is granted.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

(1) A request to correct the inventorship that sets forth the desired inventorship change; (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;

(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as

permitted by §§ 1.42, 1.43 or § 1.47; (4) The processing fee set forth in § 1.17(i); and (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b).

The request under 37 CFR 1.48(a) is **GRANTED**.

A petition under 37 CFR 1.183 only requires a \$130.00 petition fee. Accordingly, the requisite fee will be deducted from the \$200.00 submitted with the instant petition, with the remaining \$70.00 being credited to petitioner's deposit account as authorized.

Telephone inquiries concerning this matter should be directed to Petitions Examiner Liana Walsh at (571) 272-3206.

The matter is being referred to Technology Center AU 1616 for examination on the merits.

/dab/ David Bucci Petitions Examiner Office of Petitions



UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. BOX 1450 Alexandria Virginia 22313-1450

1	APPLICATION	FILING or	GRP ART			1	
	NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
•	09/764 734	01/17/2001	1616	966	13509(C)	27	1

201 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100 CONFIRMATION NO. 6621 CORRECTED FILING RECEIPT



Date Mailed: 11/17/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

#### Applicant(s)

Paula Ann Johnson, Wirral, UNITED KINGDOM; Andrew Sjaak Landa, Wirral, UNITED KINGDOM; Stephen Anthony Makin, Wirral, UNITED KINGDOM; Ian Robert Mcmillan, Wirral, UNITED KINGDOM; Henry Saul Winchell, Walnut Creek, CA, Deceased;

# Power of Attorney:

Matthew Boxer--28495

Domestic Priority data as claimed by applicant

**Foreign Applications** 

UNITED KINGDOM 0001133.8 01/18/2000 UNITED KINGDOM 0001132.0 01/18/2000

If Required, Foreign Filing License Granted: 03/29/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/764,734** 

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

page 1 of 3

Title

Anti-microbial compositions

**Preliminary Class** 

424

#### PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

# LICENSE FOR FOREIGN FILING UNDER Title 35, United States Code, Section 184 Title 37, Code of Federal Regulations, 5.11 & 5.15

# **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6497678	2002-12-24	09764831	2001-01-17	DATA.57US01			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.			
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee 3 ½ year	Code (1551)		Fee	Code (2551)			
● 7 ½ year	(1552)		○ 7½ year	(2552)			
○ 11 ½ year	r (1553)		○ 11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."			
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am					
	or agent registered to p	practice before the	Patent and Tradem	ark Office			
A sole pater	ntee						
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	ee of record of the entir	e interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
"	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature /Kirk D. Swenson/ Date (YYYY-MM-DD) 2011-01-2								
Name	Kirk D. Swenson	Registration Number	52265					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6497678

Issue Date:

December 24,2002

Application No. 09764831

Filed:

January 17,2001

Attorney Docket No. DATA\_57

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

January 28,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 28,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

		Paper No.:
DATE	: <u>2/11/2011</u>	
TO SPE OF	: ART UNIT	
SUBJECT	: Request for Certificate of Corre	ection for Appl. No.: <u>09/765.112</u> Patent No. <u>7,862,774</u>
		CofC mailroom date 1/31/11
Please resp	ond to this request for a co	ertificate of correction within 7 days.
FOR IFW FI	ILES:	
the IFW app		/corrections as shown in the <b>COCIN</b> document(s) in natter should be introduced, nor should the scope or
	plete the response (see be nent code <b>COCX</b> .	elow) and forward the completed response to scannin
FOR PAPER	R FILES:	
	•	corrections as shown in the attached certificate of (see below) and forward it with the file to:
	ficates of Correction Bra Jolph Square – 9D10-A	
Rand		_Ernest C. White, LIE
Rand	olph Square – 9D10-A	_Ernest C. White, LIE
Rand	olph Square – 9D10-A	Ernest C. White, LIE  Certificates of Correction Branch
Rand Palm	olph Square – 9D10-A Location 7580	_Ernest C. White, LIE
Rand Palm Thank You The reques	olph Square – 9D10-A Location 7580 For Your Assistance	Ernest C. White, LIE  Certificates of Correction Branch
Rand Palm Thank You The request	For Your Assistance t for issuing the above-ic	Ernest C. White, LIE  Certificates of Correction Branch 703-756-1814
Rand Palm Thank You The request	For Your Assistance t for issuing the above-ic	Ernest C. White, LIE  Certificates of Correction Branch 703-756-1814  dentified correction(s) is hereby:
Rand Palm Thank You The request	For Your Assistance t for issuing the above-ic	
Rand Palm  Thank You  The request  Note your decision	For Your Assistance  t for issuing the above-ice on the appropriate box.  Approved  Approved in Part	
Rand Palm  Thank You  The request  Note your decision	For Your Assistance  t for issuing the above-ice on the appropriate box.  Approved  Approved in Part  Denied	
Rand Palm  Thank You  The request  Note your decision	For Your Assistance  t for issuing the above-ice on the appropriate box.  Approved  Approved in Part  Denied	
Rand Palm  Thank You  The request  Note your decision	For Your Assistance  t for issuing the above-ice on the appropriate box.  Approved  Approved in Part  Denied	
Rand Palm  Thank You  The request  Note your decision	For Your Assistance  t for issuing the above-ice on the appropriate box.  Approved  Approved in Part  Denied	

		Paper No.:			
DATE	: <u>2/11/2011</u>				
TO SPE OF	: ART UNIT				
SUBJECT	: Request for Certificate of Co	prrection for Appl. No.: <u>09/765.112</u> Patent No. <u>7,862,774</u>			
		CofC mailroom date 1/31/11			
Please resp	ond to this request for a	certificate of correction within 7 days.			
FOR IFW F	ILES:				
the IFW app	•	es/corrections as shown in the <b>COCIN</b> document(s) in matter should be introduced, nor should the scope or			
	plete the response (see nent code <b>COCX</b> .	below) and forward the completed response to scanning			
FOR PAPE	R FILES:				
Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:					
	olph Square – 9D10-A				
Palm	Location 7580	_Ernest C. White, LIE			
Palm	Location 7580				
Palm	Location 7580	Certificates of Correction Branch			
Thank You	For Your Assistance	Certificates of Correction Branch 703-756-1814			
Thank You The reques	For Your Assistance	Certificates of Correction Branch			
Thank You The reques	For Your Assistance t for issuing the above-	Certificates of Correction Branch 703-756-1814			
Thank You The reques Note your decision	For Your Assistance t for issuing the above-	Certificates of Correction Branch 703-756-1814  identified correction(s) is hereby:			
Thank You The reques Note your decision	For Your Assistance t for issuing the above- n on the appropriate box. Approved	Certificates of Correction Branch 703-756-1814  identified correction(s) is hereby:  All changes apply.			
Thank You The reques Note your decision	For Your Assistance  t for issuing the above- n on the appropriate box.  Approved  Approved in Part	Certificates of Correction Branch 703-756-1814  -identified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.			
Thank You The reques Note your decision	For Your Assistance t for issuing the above- n on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 703-756-1814  -identified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.			
Thank You The reques Note your decision	For Your Assistance t for issuing the above- n on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 703-756-1814  -identified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.			
Thank You The reques Note your decision	For Your Assistance t for issuing the above- n on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 703-756-1814  -identified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.			
Thank You The reques Note your decision	For Your Assistance t for issuing the above- n on the appropriate box. Approved Approved in Part Denied	Certificates of Correction Branch 703-756-1814  -identified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.			

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usbto.gov

MAILED
DEC 2 2 2011
OFFICE OF PETITIONS

NOKIA CORPORATION AND ALSTON & BIRD LLP C/O ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET SUITE 4000 CHARLOTTE NC 28280-4000

In re Application of
Kalevo, et al.

Application No. 09/766,035

Filed: January 19, 2001

Attorney Docket No. 042933/412607

ON PETITION

This is in response to the petition to revive under 37 CFR 1.137(b), filed December 9, 2011.

The petition under 37 CFR 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to timely file an Appeal Brief. The Office mailed a Notice of Panel Decision from Pre-Appeal Brief Review on April 23, 2010, which set an extendable period for reply of one month for applicants to file an Appeal Brief. No Appeal Brief having been filed, the application became abandoned on May 24, 2010. The Office mailed a Notice of Abandonment on September 22, 2010.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of a Request for Continued Examination. The application is being forwarded to Group Art Unit 2621 for consideration of the RCE, filed December 9, 2011.

Telephone inquiries concerning this decision may be directed to the undersigned at 571-272-3207.

cy f

Cliff Congo Petitions Attorney Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

SHERIDAN K. SNEDDEN PILLSBURY WINTHROP SHAW PITTMAN LLP P.O. BOX 10500 MCLEAN, VA 22102

MAILED

JAN 03 2012

OFFICE OF PETITIONS

In re Patent No. 6,582,228

Issued: June 24, 2003

Application No. 09/766,064

Filed: January 22, 2001

Attorney Docket No: 034920-000001

**ON PETITION** 

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed December 15, 2011 under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Finally, there is no indication that petitioner herein was ever empowered to handle matters related to this patent. If petitioner desires to receive future correspondence regarding this patent, the appropriate power of attorney documentation must be submitted. If the new power of attorney and/or change of address is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b). This decision will be mailed to petitioner, however, all future correspondence will be mailed solely to the correspondence address of record. If petitioner desires to receive future correspondence regarding any Maintenance Fee Reminder which <u>may</u> be mailed concerning this patent, a Fee Address should be submitted to Maintenance Fee Division.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff

at (571) 272-3282.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

John E. Vick, Jr. Dority & Manning, P.A. P.O. Box 1449 Greenville SC 29602 MAILED

OCT 2 6 2011

OFFICE OF PETITIONS

In re Application of

Daniel W. Catena

Application No. 09/766096

Filing or 371(c) Date: 01/19/2001 :

Patent No.: 6541537

Issued: 04/01/2003

Title of Invention:

ACRYLATE POLYMERIC

**COMPOSITIONS AND METHODS** 

ON PETITION

This is a notice regarding request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions

Patent No.: 6541537 Page 2

under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

CC: KELMARDAN INTERNATIONAL, INC. 118 ANTIGUA WAY GREER, SC 29650



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DIRECTOR OF ENGINEERING ORTHODYNE ELECTRONICS CORP. 16700 RED HILL AVENUE **IRVINE CA 92606** 

MAILED

JUN 13 2011

OFFICE OF PETITIONS

In re Patent No. 6,471,116

Issue Date: October 29, 2002

Application No. 09/766,287 **NOTICE** 

Filed: January 19, 2001

Attorney Docket No. OE-33-A

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **REJECTED**.

All papers submitted to the USPTO must be signed by:

(1) An attorney or agent of record appointed in compliance with § 1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or

(5) All of the applicants (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

If the instant Change in Entity Status is on the behalf of the assignee, it does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment

Patent 6,471,116 Page 2

submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By hand:

Customer Window located at:

U.S. Patent and Trademark Office

Customer Service Window Randolph Building

401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

**ATTN**: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

/Liana Walsh/ Liana Walsh Petitions Examiner Office of Petitions

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Laboratory Corporation of America Holdings c/o Kilpatrick Townsend & Stockton LLP 1001 West Fourth Street Winston-Salem NC 27101 MAILED
JUN. 1 0 2011
OFFICE OF PETITIONS

In re Application of Neil T. Parkin et al.

Application No. 09/766,344

Patent No. 7,138,231 Filed: January 19, 2001

Attorney Docket No. 11068-033-999

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed May 03, 2011.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

| Tredelle D. Jackson| Paralegal Specialist Office of Petitions Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
7,080,120	2006-07-18	09/766,382	2001-01-19	SORTE-001PAR			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
SMALL ENTITY	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.			
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee 3 ½ year	Code (1551)		Fee  3 ½ year	Code (2551)			
○ 7½ year	(1552)		○ 7½ year	(2552)			
○ 11 ½ year	r (1553)		○ 11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTI	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."			
I certify, in accorda	ance with 37 CFR 1.4(c	)(4) that I am					
	or agent registered to p	practice before the	Patent and Tradem	ark Office			
A sole pater	ntee						
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	ee of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/kenneth d'alessandro/	Date (YYYY-MM-DD)	2010-12-21				
Name	Kenneth D'Alessandro	Registration Number	29144				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

7080120

Issue Date:

July 18,2006

Application No. 09766382

Filed:

January 19,2001

Attorney Docket No. 43416-0002

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

December 21,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

December 21,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

PAPER NO.: 20

DATE

: 8/4/10

TO SPE OF

: ART UNIT: 3747 Attn: CRONIN STEPHEN K (SPE)

**SUBJECT** 

PTOL-306 (REV. 7/03)

: Request for Certificate of Correction for Appl. No.: 09/766452 Patent No.: 6561141

Please respond to this request for a certificate of correction within 7 days.

# **FOR IFW FILES:**

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code COCX.

# **FOR PAPER FILES:**

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building (RSQ)
2800 South Randolph Street, Suite 9XXXX
Arlington, VA 22206
PALM Location 7580

# Tasneem Siddiqui

Certificates of Correction Branch 703-756-1593

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Thank You for Your Assistance	
The request for issuing the above-ide Note your decision on the appropriate box.	entified correction(s) is hereby:
Approved	All changes apply.
☐ Approved in Part	Specify below which changes do not apply.
☐ Denied	State the reasons for denial below.
Comments:	
·	
	374

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing	<u> </u>	Docket Number (if applicable)	
6,487,429	2002-11-26	09/766,872	2001-0	01-18	IMET0062	
of the actual U.S. a 1.366(c) and (d).					ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY    X   Patentee cla	ims, or has previously	claimed, small en	tity status	s. See 37 Cl	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 C	FR 1.27(g)		
NOT Small Entity			Small	Entity		
Fee 3 ½ year	Code (1551)			Fee 3 ½ year	Code (2551)	
○ 7 ½ year	(1552)		•	7 ½ year	(2552)	
◯ 11 ½ year	(1553)		0	11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) mus	st be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petitic	on.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN	PAYMEN	IT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) F REINSTATED	REQUEST THAT THE I	DELAYED PAYMI	ENT OF	THE MAINTI	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	TORY OF	R SIGNATO	RIES	
	states: "Any petition und fice, or by the patentee				ttorney or agent registered to practice before the Patent st."	
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am				
An attorney	or agent registered to	practice before the	e Patent	and Tradem	ark Office	
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this sub	mission on b	ehalf of all the other patentees.	
A joint pater	ntee; all of whom are si	gning this e-petition	on			
The assigne	ee of record of the entir	e interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/MAG/	Date (YYYY-MM-DD)	2010-12-09					
Name	Michael A. Glenn	Registration Number	30176					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
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- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6487429

Issue Date: November 26,2002

Application No. 09766872 :DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Filed: January 18,2001

Attorney Docket No. IMET0062

This is a decision on the electronic petition, filed December 9,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and
this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print
and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))									
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing I	Date '-MM-DD)	Docket Number (if applicable)				
6435937	2002-08-20	09767119	2001-0	1-22	5220.3001.001				
					ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR				
SMALL ENTITY    X   Patentee cla	SMALL ENTITY  X Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.								
	EMENT TO SMALL EN no longer entitled to sm		See 37 CF	R 1.27(g)					
NOT Small Entity			Small E	ntity					
Fee 3 ½ year	Code (1551)		0	Fee 3 ½ year	Code (2551)				
○ 7½ year	(1552)		•	7 ½ year	(2552)				
○ 11 ½ year	r (1553)		0	11 ½ year	(2553)				
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) mus	t be paid as	a condition of accepting unintentionally delayed payment				
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petitioi	<b>1</b> .					
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMEN <sup>-</sup>	T OF THE N	MAINTENANCE FEE TO THIS PATENT WAS				
PETITIONER(S) REINSTATED	REQUEST THAT THE I	DELAYED PAYME	NT OF T	HE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT				
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR	SIGNATOR	RIES				
	states: "Any petition und fice, or by the patentee				ttorney or agent registered to practice before the Patent it."				
I certify, in accorda	ance with 37 CFR 1.4(d	l)(4) that I am							
An attorney	or agent registered to	oractice before the	Patent a	nd Tradema	ark Office				
A sole pater	ntee								
A joint pater	ntee; I certify that I am	authorized to sign	this subn	nission on b	ehalf of all the other patentees.				
A joint pater	ntee; all of whom are si	gning this e-petitio	on						
The assigne	ee of record of the entir	e interest							

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
"	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/Robert L Farris/	Date (YYYY-MM-DD)	2010-12-23					
Name	Robert L. Farris	Registration Number	25112					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6435937

Issue Date:

August 20,2002

Application No. 09767119

Filed:

January 22,2001

Attorney Docket No. 5220 P-3001.001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

December 23,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

December 23,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BERENBAUM WEINSHIENK PC 370 17TH STREET SUITE 4800 DENVER CO 80202 MAILED OCT 2 7 2011

OFFICE OF PETITIONS

In re Patent No. 6,714,140

Issued: March 30, 2004

Application No. 09/767,439

Filed: January 23, 2001

Attorney Docket No. 14455.910US01

**ON PETITION** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 28, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SAP GLOBAL IP C/O COOLEY LLP 777 6TH STREET NW, SUITE 1100 ATTN: PATENT GROUP / WSG-HN WASHINGTON DC 20001

OCT 0 6 2010

OFFICE OF PETITIONS

In re Patent No: 7,178,099

Issued: February 13, 2007

Application No. 09/767,810

Filed: January 23, 2001

Attorney Docket No. BOBJ-174/00US

304661-2364

NOTICE -

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed August 12, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **DISMISSED**.

The request under 37 CFR 1.28 cannot be accepted at this time since it appears that the petition is not signed by a person having authority to act in the above-identified patent.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under §3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney or agent registered to practice before the U.S. Patent and Trademark Office or the assignee of the entire interest under 37 CFR 3.73(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Additionally, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski

Petitions Examiner

Office of Petitions

cc:

A J PEACH

Joan Olszewsh

DENNEMEYER & CO LTD

REGENT HOUSE HEATON LANE

STOCKPORT CHESHIRE

**ENGLAND SK4 1BB** 

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6577651	2003-06-10	09768430	2001-01-24	TRA-060			
of the actual U.S. a 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR			
SMALL ENTITY	ims, or has previously	claimed, small ent	tity status. See 37 Cl	FR 1.27.			
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
11 ½ year	, ,		11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	1 558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b	* *	his petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN I	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED							
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES							
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."			
I certify, in accorda	nnce with 37 CFR 1.4(d	i)(4) that I am					
	or agent registered to	oractice before the	e Patent and Tradem	ark Office			
A sole pater							
A joint pater	itee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petition	on				
The assignee of record of the entire interest							

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

The Assignee of record of the entire interest								
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest								
Signature	/Theodore Chung/	Date (YYYY-MM-DD)	2011-08-09					
Name	Theodore Chung							
Enter Reel an	d Frame Number	Remove						
Reel Number	008874 Frame Number 0248							
Enter Reel an	d Frame Number	Remove						
Reel Number	008908	Frame Number	0403					
Click ADD for a	dditional Reel Number and Frame Number	Add						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6577651 Issue Date:

June 10,2003

Application No. 09768430

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

January 24,2001 Filed:

Attorney Docket No. TRA-060

September 14,2011 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 14,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Law Office of Jim Zegeer Suite 108 801 North Pitt Street Alexandria, VA 22314

MAILED

SEP 23 2011

OFFICE OF PETITIONS

In re Patent No. 6,390,662 Issue Date: May 21, 2002

Application No. 09/768,780

Filed: January 25, 2001 Patentee(s): Carolyn S. Henry, et. al. ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed on August 22, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The present petition is stated to be signed by sole inventor, Carolyn S. Henry. However, since a review of the record shows that Carolyn S. Henry is listed as a joint inventor and Jimmy Dale Henry is deceased, the signature of Carolyn S. Henry is being accepted as a joint patentee, who certifies that she is authorized to sign the petition on behalf of the other patentee<sup>1</sup>.

In view of the above, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

Petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional. Thus, the maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

It is noted that petitioner submitted \$1,340 for payment of the 7 ½ year small entity maintenance fee. However, since the maintenance fee required is \$1,240, petitioner may request a refund of \$100 overpayment, by writing to the following address: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

This patented file is being forwarded to Files Repository.

Telephone inquirles should be directed to the undersigned at (571) 272-3226.

Andrea Smith

Petitions Examiner Office of Petitions

<sup>&</sup>lt;sup>1</sup> Petitioner provided evidence to show that joint inventor Jimmy Dale Henry is unavailable to sign the present petition.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6502030

Issue Date:

December 31,2002

Application No. 09769537

Filed:

January 25,2001

Attorney Docket No.

:UNDER 37 CFR 1.378(c)

:DECISION GRANTING PETITION

January 24,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 24,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number. PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c)) Issue Date Application Filing Date Patent Number Docket Number (if applicable) (YYYY-MM-DD) Number (YYYY-MM-DD)

6502030 2002-12-31 09769537 2001-01-25 CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d). SMALL ENTITY Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g) Small Entity **NOT Small Entity** Code Fee Code Fee 3 1/2 year (2551)3 ½ year (1551)7 ½ year (2552)(1552)7 ½ year (2553)11 1/2 year 11 1/2 year (1553)SURCHARGE The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee. MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition. STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES 37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest." I certify, in accordance with 37 CFR 1.4(d)(4) that I am An attorney or agent registered to practice before the Patent and Trademark Office A sole patentee A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees. A joint patentee; all of whom are signing this e-petition The assignee of record of the entire interest

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

The Assignee of record of the entire interest							
Signature req	R 3.71 an assignee becomes of record by fil uirements are set forth in 37 CFR 1.4(d), an ie entire interest			n behalf of the			
Signature	/Karl Gemperli/ Date (YYYY-MM-DD) 2012-01-23						
Name	Karl Gemperli-President/Elecsys International Corp						
Enter Reel and Frame Number Remove							
Reel Number 027388 Frame Number 0334							
Click ADD for additional Reel Number and Frame Number Add							

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

DATE	: <u>12/28/10</u>	
TO SPE OF	: ART UNIT	
SUBJECT	: Request for Certificate of Corre	ction for Appl. No.: <u>09770078</u> Patent No.: <u>7046239</u>
		CofC mailroom late: 12/15/10
Please resp	ond to this request for a ce	rtificate of correction within 7 days.
FOR IFW FI		
FW applicat	ew the requested changes/o tion image. No new matter the claims be changed.	corrections as shown in the COCIN (locument(s) in to should be introduced, nor should the scope or
	plete the response (see be ment code COCX.	low) and forward the completed response to scanning
FOR PAPE	R FILES:	
correction.   Certif Rand Palm	ew the requested changes/or Please complete this form officates of Correction Braidolph Square – 9D10-An Location 7580 ax the Directors/SPE responses	
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correction.   Certif Rand Palm	Please complete this form of the form of the following states of Correction Brain dolph Square – 9D10-An Location 7580	(see below) and forward it with the file to:  nch (CofC)  onse to 571-270-9990 <u>Lamonie Newsom</u>
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Thank You The reques Note your decision	Please complete this form officates of Correction Braidolph Square – 9D10-An Location 7580 ax the Directors/SPE response for issuing the above-iden on the appropriate box.  Approved Approved Denied	(see below) and forward it with the file to:  nch (CofC)  Onse to 571-270-9990  Certificates of Correction Branck 571-272-3   21  dentified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.

PAGE 1/2 \* RCVD AT 12/30/2010 12:00:32 PM [Eastern Standard Time] \* SVR:USPTO-EFXRF-5/0 \* DNIS:2709990 \* CSID: \* DURATION (mm-ss):00-583 Trademark Office

12 30 01

SPE, ARTUNIT 2629

		Paper No.:
DATE	3/21/11	
TO SPE OF	: ART UNIT <u>2629</u>	
SUBJECT	: Request for Certificate of Corre	ection for Appl. No.: <u>09770078</u> Patent No.: <u><b>7046239</b></u>
		CofC mailroom date: 03/16/11
Please respo	ond to this request for a ce	ertificate of correction within 7 days.
FOR IFW FI	LES:	•
the IFW app		corrections as shown in the <b>COCIN</b> document(s) in atter should be introduced, nor should the scope or
	plete the response (see be nent code <b>COCX</b> .	elow) and forward the completed response to scanning
FOR PAPER	R FILES:	
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correction. F	Please complete this form	corrections as shown in the attached certificate of (see below) and forward it with the file to:
correction. F Certif Rando Palm		(see below) and forward it with the file to:
Correction F Certif Rando Palm	Please complete this form icates of Correction Branolph Square – 9D10-A Location 7580	(see below) and forward it with the file to:
correction. F Certif Rando Palm	Please complete this form icates of Correction Branolph Square – 9D10-A Location 7580	(see below) and forward it with the file to:  nch (CofC)  onse to 57/1-27/0-9390
correction. F Certif Rando Palm	Please complete this form icates of Correction Branolph Square – 9D10-A Location 7580	(see below) and forward it with the file to:  nch (CofC)  onse to 57/1-270-5330  Camonte Newsome
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	JEL NESPO	NSE FOR CERTIFICATE OF CO	<u>'nneutiun</u>	· _
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SPERESPO	NSE FOR CERTIFICATE OF COR	RECTION
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TG SPE OF : ART UNIT 245	y	
SUBJECT : Request for Certificate of	f Correction for Appl. No.:	57 Patent No.: 77119.38
•		ofC mailroom date: 1 LGLO
Please respond to this request for	· ·	
FOR IFW FILES: Should	cofc be a	XAPPROVED
Please review the requested chan the IFW application image. No ne meaning of the claims be changed	ges/corrections as shown in t w matter should be introduce	he COCIN document(s) in
Please complete the response (se using document code <b>COCX</b> .	ee below) and forward the con	npleted response to scanning
FOR PAPER FILES:		
Please review the requested chan- correction. Please complete this for	ges/corrections as shown in to orm (see below) and forward	he attached certificate of it with the file to:
Certificates of Correction Randolph Square – 9D10- Palm Location 7580	<b>Δ</b>	Tubb rtificates of Correction Branch
		3-756-1814
Thank You For Your Assistance	·	
The request for issuing the above Note your decision on the appropriate box.	re-identified correction(s) is	hereby:
X Approved	All changes apply	<b>/</b> .
Approved in Part	Specify below wh	ich changes <b>do not</b> apply.
☐ Denied	State the reasons	for denial below.
Comments:		
	/ Joseph E. Avalling/	
	/Joseph E. Avellino/	2454 Art Unit
L-306 (REV. 7/03)		OMMERCE Patent and Trademark Office



Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MICHAEL J. COLITZ, JR. 217 HARBOR VIEW LANE LARGOFL 33770

MAILED
FEB 0 9 2011
OFFICE OF PETITIONS

In re Patent No. 6,540,260

Issue Date: April 1, 2003

Application No. 09/770,424

Filed: January 26, 2001

Attorney Docket No. TD08/14

ON PETITION

This is a decision in response to a petition filed July 1, 2009, via Certificate of Mailing and supplemented on January 13, 2011, under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

A petition under 37 CFR 1.378(c) must be filed within twenty-four months after the six month grace period specified in 35 USC 41(b). This patent issued on April 1, 2003. The six month grace period for the 3 ½ year maintenance fee expired at midnight on April 1, 2007. Accordingly, an unintentional petition to reinstate the instant patent must have been submitted no later than April 1, 2009. Since the original petition was filed on July 1, 2009, it was not timely filed and the instant patent will not be reinstated under the unintentional provisions of 37 CFR 1.378(c).

Patentee may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.378(b). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the application. However in accordance with 37 CFR 1.34 (a), the signature appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party on whose behalf he/she acts. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to the person signing the petition; however, all future correspondence regarding this patent will be directed solely to the above noted correspondence address currently of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Window located at:

U.S. Patent and Trademark Office

Customer Service Window Randolph Building

401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-6059. Any questions directly concerning a petition under 37 CFR 1.378(b) may be directed to the Office of Petitions Helpdesk at (571) 272-3282.

Alicia Kelley Petitions Examiner Office of Petitions

cc:

**EDWARD DUTKIEWICZ** 

P.O. BOX 937

DADE CITY, FL 33526

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number. PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c)) Issue Date Application Filing Date Patent Number Docket Number (if applicable) (YYYY-MM-DD) (YYYY-MM-DD) Number 6,458,140 2002-10-01 09/771,007 2001-01-26 62364-393128 CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d). SMALL ENTITY Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g) Small Entity **NOT Small Entity** Code Fee Code Fee 3 1/2 year (2551)3 ½ year (1551)7 ½ year (2552)(1552)7 ½ year (2553)11 1/2 year 11 1/2 year (1553)SURCHARGE The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee. MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition. STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES 37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest." I certify, in accordance with 37 CFR 1.4(d)(4) that I am An attorney or agent registered to practice before the Patent and Trademark Office A sole patentee A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees. A joint patentee; all of whom are signing this e-petition The assignee of record of the entire interest

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature /Michael G. Verga/ Date (YYYY-MM-DD) 2011-12-07							
Name	Name Michael G. Verga Registration Number 39410						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6458140

Issue Date:

October 1,2002

Application No. 09771007

Filed:

January 26,2001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Attorney Docket No. VASC003CIP

December 7,2011

,under 37 CFR 1.378(c)

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

December 7,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

AGENSYS C/O MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE **SUITE 100** SAN DIEGO CA 92130-2040

MAILED

SEP 1 0 2010

OFFICE OF PETITIONS

In re Patent No. 7,510,855 Issued: March 31, 2009 Application No. 09/771,312

Filed: January 26, 2001

Attorney Docket No: 511582000100

: DECISION ON REQUEST : FOR RECONSIDERATION

: OF PATENT TERM ADJUSTMENT

**AND** 

: NOTICE OF INTENT TO ISSUE : CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 filed on May 29, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 801 days to 1312 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred fifty-eight (1458) days is GRANTED to the extent indicated herein.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 26, 2004 and ends on November 2, 2006, the day before the RCE was filed, and the B delay considering the 142 days of overlap is 1011 days. See 35 U.S.C. 154(b)(1)(B)(i). Non-overlapping B delay is 869 days.

Additionally, Applicant argues that a corrected Appeal Brief in response to a March 18, 2008 Notification of Non-Compliant Appeal Brief was filed 103 days later on June 18. 2008 and thus that 103 days applicant delay should have been entered in accordance with 35 USC 154(b)(2)(C)(ii) and 37 CFR 1.704(b)<sup>1</sup>.

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

<sup>137</sup> CFR 1.704(b) provides that:

Applicant is advised that the filing of an appeal brief is not a reply within the meaning of the rule and as such, the correction of an appeal brief is not a failure to engage.

As such, the patent term adjustment is 1458 (883 "A delay" days, plus 869 "B delay" days, minus 294 applicant delay days) not 1312.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand four hundred fifty-eight (1458)** days.

Telephone inquiries specific to this decision should be directed to the undersigned

Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# **DRAFT** UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

**PATENT** 

: 7,510,855 B2

DATED

: March 31, 2009

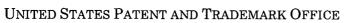
INVENTOR(S): Aya Jakobovits

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [\*] Notice: under 35 USC 154(b) by (801) days

Delete the phrase "by 801 days" and insert – by 1458 days--





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KILPATRICK TOWNSEND & STOCKTON, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO CA 94111-3834

MAILED
FEB 1 3 2012
OFFICE OF PETITIONS

In re Patent No. 6,516,463

Issue Date: February 4, 2003 :

Application No. 09/771,482 : NOTICE

Filed: January 25, 2001

Attorney Docket No. 20181003700

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby NOT ACCEPTED.

The fee deficiency cannot be accepted because no itemization has been submitted, as required by 37 CFR 1.28(C) (ii) which states:

- (2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.
- (ii) Itemization of the deficiency payment. An itemization of the total deficiency payment is required. The itemization must include the following information:
- (A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for non-small entity;

- (B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;
  - (C) The deficiency owed amount (for each fee erroneously paid); and
- (D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

As indicated above, the submission filed January 6, 2012, does not include a proper itemization. In this regard, the filing fee should be further itemized as indicated above.

This itemization must be provided within one (1) month of the mail date of this decision to avoid the return of the deficiency payment. See 37 CFR 1.28 (c)(3). No extension of this 1-month time limit will be granted under 37 CFR 1.136(a).

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page

**Petitions Examiner** 

Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN	TENTIONALI EXPIRED P			AYMENT OF MAINTENANCE FEE IN AN 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-	-DD)	Docket Number (if applicable)
6594605	2003-07-15	09771527	2001-01-29		ID 036411 / jlr
of the actual U.S. a 1.366(c) and (d).					tify: (1) the patent number and (2) the application number s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small en	tity status. See	37 CF	R 1.27.
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	NTITY STATUS all entity status.	See 37 CFR 1.2	27(g)	
NOT Small Entity			Small Entity		
Fee 3 ½ year	Code (1551)		Fee 3 1/2 )		Code (2551)
● 7 ½ year	(1552)		7 1/2 )	year	(2552)
11 ½ year	r (1553)		O 11 ½	year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be pa	aid as a	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN I	PAYMENT OF	THE MA	AINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE I	DELAYED PAYMI	ENT OF THE M	AINTEI	NANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	TORY OR SIGN	IATORI	ES
	states: "Any petition und fice, or by the patented				orney or agent registered to practice before the Patent
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am			
<ul><li>An attorney</li></ul>	or agent registered to	practice before the	e Patent and Tra	ademar	k Office
A sole pater	ntee				
A joint pater	ntee; I certify that I am	authorized to sign	this submission	n on be	half of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on		
The assigne	ee of record of the entir	e interest			

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	Signature /SMG/ Date (YYYY-MM-DD) 2011-08-01							
Name	Name Steven M. Gruskin Registration Number 36818							

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6594605

Issue Date:

July 15,2003

Application No. 09771527

Filed:

January 29,2001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Attorney Docket No. KITANO.008AUS

August 1,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

August 1,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

**GLEN THURBER** 2041 SW WESTERN **TOPEKA, KS 66604** 

MAILED

NOV 3 0 2010

**OFFICE OF PETITIONS** 

In re Patent No. 6,554,726

Issue Date: April 29, 2003

Application No. 09/771,822

Filed: January 29, 2001

Attorney Docket No. 33117.2

ON PETITION

This is a decision in response to a petition filed September 28, 2010, under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

A petition under 37 CFR 1.378(c) must be filed within twenty-four months after the six month grace period specified in 35 USC 41(b). The patent issued on April 29, 2003. The six month grace period for the 3 ½ year maintenance fee expired at midnight on April 29, 2007. Accordingly, an unintentional petition to reinstate the instant patent must have been submitted no later than April 29, 2009. Since the original petition was filed on September 28, 2010, it was not timely filed and the instant patent will not be reinstated under the unintentional provisions of 37 CFR 1.378(c).

Patentee may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.378(b). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund of the \$490 for the maintenance fee and \$1640 for the surcharge submitted with the petition. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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Alexandria, VA 22313-1450

By hand:

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ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-6059. Any questions directly concerning a petition under 37 CFR 1.378(b) may be directed to the Office of Petitions Helpdesk at (571) 272-3282.

Alicia Kelley

Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No. 15

GLEN THURBER 2041 SW WESTERN TOPEKA KS 66604

MAILED
FEB 0 1 2011
OFFICE OF PETITIONS

In re Patent No. 6,554,726 :

Issue Date: 04/29/2003 :

Application Number: 09/771,822 : ON PETITION

Filing Date: 01/29/2001

For: GRAPHITE ARROW AND METHOD

OF MANUFACTURE

This is a decision is in response to the petition under 37 CFR 1.378(b), 1 filed on December 2, 2010, to accept the delayed payment of the maintenance fee for the above-identified patent.

#### The petition is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

 $<sup>^{1}</sup>$  A grantable petition to accept a delayed maintenance fee payment under 37 CFR  $1.378\,(\mathrm{b})$  must be include

<sup>(1)</sup> the required maintenance fee set forth in § 1.20(e) through (g);

<sup>(2)</sup> the surcharge set forth in \$1.20(I)(1); and

<sup>(3)</sup> a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

The patent issued on April 29, 2003. The first maintenance fee could have been paid during the period from April 29 through October 30, 2006, or, with a surcharge, during the period from October 31, 2006, through April 29, 2007. Accordingly, this patent expired at midnight on April 29, 2007, for failure to timely remit the maintenance fee. On September 28, 2010, a petition under 37 CFR 1.378(c) was filed. On November 30, 2010, the petition was dismissed because the petition was filed more than 24 months after the expiration of the six month grace period specified in 35 U.S.C. 41(b).

Petitioner asserts that the delay in payment was unavoidable because petitioner believed the attorney of record was responsible for timely payment of the maintenance fee.

A petition to accept the delayed maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). This petition lacks requirement (1).

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable".<sup>2</sup>

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378 (b) (3).

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses identical language (i.e. "unavoidable delay"). Decisions reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. In this regard:

<sup>&</sup>lt;sup>2</sup> 35 U.S.C. § 41(c)(1).

Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1989)).

<sup>&</sup>lt;sup>4</sup> Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used by prudent and careful men in relation to their most important business").

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. 5

As 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. That is, an adequate showing that the delay was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent.

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.378(b):

- (1) The delay in reply that originally resulted in expiration;
- (2) The delay in filing an initial petition pursuant to § 1.378(b) to revive the application; and
- (3) The delay in filing a grantable petition pursuant to § 1.378(b) to revive the application.<sup>8</sup>

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

<sup>&</sup>lt;sup>6</sup> Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

Id.

<sup>8</sup> See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 at 53158 (October 10, 1997).

This petition lacks the showing required by periods (1) and (2).

With regard to period (1), a review of the record indicates that there are currently no practitioners of record in the subject patent. Petitioner must identify the practitioner believed responsible for tracking and paying the maintenance fee in any renewed petition.

While petitioner alleged chose to rely upon his patent practitioner, such reliance per se does not provide petitioner with a showing of unavoidable delay within the meaning of 37 CFR 1.378(b) and 35 U.S.C. § 41(c). Pather, such reliance merely shifts the focus of the inquiry from petition to whether the attorney or agent acted reasonably and prudently. As such, assuming that the agent had been so engaged, then it is incumbent upon petitioner to demonstrate, via a documented showing, that the attorney or agent had docketed this patent for the first maintenance fee payment in a reliable tracking system. If petitioner cannot establish that agent had been so engaged, then petitioner will have to demonstrate what steps were established by petitioner to monitor and pay the maintenance fee.

Therefore, any showing of unavoidable delay must include a statement from petitioner's patent attorney, as well as any other attorney(s) of record during the period that payment of the maintenance fee was delayed, as to why action was not taken to timely submit the required maintenance fee while the patent was under that agent's control. Petitioner should send a letter (accompanied by a copy of this decision) to the registered patent practitioner by registered or certified mail, return receipt requested, indicating to the attorney or agent that the USPTO is requesting his/her assistance in determining the circumstances surrounding the expiration of this patent, and is specifically requesting the registered practitioner to provide a statement as to: (1) whether, and when, he first became aware that the first maintenance fee for this patent was due, and (2) why the maintenance fee was not timely submitted. Such statements should be accompanied by copies of any documents relevant to payment of the maintenance fee. In the event that the registered practitioner fails to provide a statement within a person (e.g. within one (1) month) specified in such letter, petitioner should

<sup>9 &</sup>lt;u>See California Med. Prod. v. Technol. Med. Prod.</u>, 921 F. Supp. 1219, 1259 (D. Del. 1995).

<sup>10 &</sup>lt;u>Id</u>.

<sup>11 &</sup>lt;u>Id</u>.

submit a copy of such letter and the return receipt indicating its delivery to the patent attorney or agent with any petition for reconsideration under 37 CFR 1.378(e).

The above paragraph notwithstanding, petitioner is reminded that the failure of communication between an applicant and counsel is not unavoidable delay. Specifically, delay resulting from a lack of proper communication between a patent holder and a registered representative as to who bore the responsibility for payment of a maintenance fee does not constitute unavoidable delay within the meaning of 35 U.S.C. § 41(c) and 37 CFR  $1.378\,(b)$ . Moreover, the Office is not the proper forum for resolving a dispute as to the effectiveness of communications between parties regarding the responsibility for paying a maintenance fee. <sup>14</sup>

A delay resulting from a lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP does not constitute an "unavoidable" delay. 15 As the showing of record does not rise to the level of unavoidable delay, the petition will be dismissed.

With regard to period (2), petitioner state when he first learned that the patent had expired, and show that any delay between when petitioner first learned that the patent had become expired and the filing of the subject petition was unavoidable.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the address noted below.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

In re Kim, 12 USPQ2d 1595 (Comm'r Pat. 1988).

<sup>13</sup> See Ray v. Lehman, 55 F.3d 606, 610, 34 USPQ2d 1786, 1789 (Fed. Cir. 1995).

<sup>14 &</sup>lt;u>Id</u>.

<sup>15</sup> See <u>Haines v. Quigg</u>, 673 F. Supp. 314, 317, 5 USPQ 1130, 1132 (N.D. Ind. 1987), Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); <u>Smith v. Diamond</u>, 209 USPQ 1091 (D.D.C. 1981); <u>Potter v. Dann</u>, 201 USPQ 574 (D.D.C. 1978); <u>Ex parte Murray</u>, 1891 Dec. Comm'r Pat. 130, 131 (1891).

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window.

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at 571-272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing (YYY	Date Y-MM-DD)	Docket Number (if applicable)	
6405543	2002-06-18	09772306	2001-0	01-29	COOLSMART-CIP	
of the actual U.S. a 1.366(c) and (d).					entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status	s. See 37 C	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 C	FR 1.27(g)		
NOT Small Entity			Small	Entity		
Fee 3 ½ year	Code (1551)		0	Fee 3 ½ year	Code (2551)	
7 ½ year	(1552)		•	7 ½ year	(2552)	
○ 11 ½ year	(1553)		0	11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) mus	st be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petitio	on.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMEN	IT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) F REINSTATED	REQUEST THAT THE [	DELAYED PAYME	NT OF	THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OF	R SIGNATO	RIES	
	tates: "Any petition und fice, or by the patentee				attorney or agent registered to practice before the Patent st."	
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am				
An attorney	or agent registered to p	oractice before the	Patent	and Tradem	ark Office	
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this sub	mission on b	pehalf of all the other patentees.	
A joint pater	ntee; all of whom are si	gning this e-petition	on			
The assignee of record of the entire interest						

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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	Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature /Vincent M DeLuca/ Date (YYYY-MM-DD) 2010-09-29							
Name	Name Vincent M DeLuca Registration Number 32408						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6405543

Issue Date:

June 18,2002

Application No. 09772306

Filed:

January 29,2001

Attorney Docket No. COOLSMART CIP

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

September 29,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 29,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

# United States Patent and Trademark Office

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

JONES DAY 555 SOUTH FLOWER STREET FIFTIETH FLOOR LOS ANGELES, CA 90071

FEB 1 7 2011

OFFICE OF PETITIONS

In re Patent No. 6,682,559

Issued: January 27, 2004

Application No. 09/772,526 : NOTICE

Filed: January 29, 2001

Attorney Docket No.: 3FTHERA.007A

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent no longer qualifies for small entity status. Accordingly, any future fees paid in this patent must be paid at the large entity rate.

The present communication is not signed by a registered patent practitioner of record. However, in accordance with 37 CFR 1.34(a), the signature of Jeffry J. Hohenshell appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. While a courtesy copy of this communication is being mailed, the appropriate power of attorney or authorization of agent must be submitted if Mr. Hohenshell desires to receive future correspondence regarding this patent.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley

**Petitions Examiner** 

Office of Petitions

cc: JEFFREY J. HOHENSHELL

SENIOR PATENT COUNSEL 710 MEDTRONIC PARKWAY MINNEAPOLIS, MN 55432



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 ww.uspto.gov

NOVO NORDISK, INC. INTELLECTUAL PROPERTY DEPARTMENT 100 COLLEGE ROAD WEST PRINCETON NJ 08540

MAILED
SEP 2 8 2010
OFFICE OF PETITIONS

In re Application of

Jonassen et al.

: DECISION ON

Patent Number: 7,576,059

APPLICATION FOR

Issue Date: 08/18/2009

PATENT TERM ADJUSTMENT

Application No. 09/772607

: and

Filing or 371(c) Date: 01/30/2001

NOTICE OF INTENT TO ISSUE

Attorney Docket Number: 4409.214-US

CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 18, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred twenty-nine (329) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred twenty-nine (329) days is **GRANTED to the extent indicated herein**.

As to the "A" delay, Patentee avers that the Office errantly failed to apply an adjustment of 141 days in connection with the mailing of an Office action in response to a Reply filed September 10, 2001. Patentee provides that the Office mailed an Office action in response to the Reply on May 31, 2002, four months and 141 days after the Reply was filed.

Further as to "A" delay, Patentee avers that the Office errantly failed to apply an adjustment of 83 days in connection with the mailing of an Office action in response to a Reply filed December 9, 2002. Patentee provides that the Office mailed an Office action in response to the Reply on July 1, 2003, four months and 83 days after the Reply was filed.

Finally as to "A" delay, Patentee avers that the Office errantly failed to apply an adjustment of 44 days in connection with the mailing of an Office action in response to a Reply filed January 2, 2004. Patentee provides that the Office mailed an Office action in response to the Reply on June 15, 2004, four months and 44 days after the Reply was filed.

As to the "B" delay, Patentee provides that the "B" delay period should be 1055 days, beginning on January 31, 2004, and ending on December 21, 2006, the day that a Request for Continued Examination ("RCE") was filed, and not 748 days as calculated by this Office.

As to Applicant delay, Patentee provides that the Office errantly failed to assess a reduction in connection with the filing of a Reply to the Notice to Comply With Sequence Disclosures, mailed September 28, 2001. Patentee provides that the Notice to Comply With Sequence Disclosures was satisfied on April 3, 2003. Further as to Applicant delay, Patentee provides that the Office errantly failed to assess a reduction in connection with the filing of a Reply to the non-final Office action mailed May 31, 2002, on December 9, 2002. Patentee provides that the total Applicant delay for the above two periods excluding overlap is 460 days.

Patentee does not dispute reductions of 93 days, 91 days, 92 days, 92 days, 61 days or 61 days pursuant to 37 CFR 1.704(b), or an adjustment of 61 days pursuant to 37 CFR 1.702(a)(2).

As to the "A" delay period, a review of the record confirms that the Office errantly neglected to assess a reduction of 141 days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of an Office action in response to a Reply filed September 10, 2001. The reduction commenced January 11, 2002, the day after the date that is four months after the Reply was filed, and ended May 31, 2002, the mailing date of the Office action in response to the Reply was mailed.

Further as to the "A" delay period, a review of the record confirms that the Office errantly neglected to assess a reduction of 83 days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of an Office action in response to a Reply filed December 9, 2002. The reduction commenced April 10, 2003, the day after the date that is four months after the Reply was filed, and ended July 1, 2003, the mailing date of the Office action in response to the Reply was mailed.

In addition, as to the "A" delay period, a review of the record confirms that an Office action in response to the Reply filed January 2, 2004, was mailed on March 18, 2004, within four months of the filing of the Reply. The Office action was returned to this Office as undeliverable by the United States Postal Service ("USPS") on March 31, 2004. Thereafter, on June 8, 2004, Applicants filed a Change of Correspondence Address in this application. Accord 37 CFR 1.4(b). As such, the Office action was timely mailed to the proper correspondence address of record, and no adjustment of the patent term in connection with the mailing of the Office action in response to the Reply filed January 2, 2004, is warranted.

Finally, as to the "A" delay period, a review of the record confirms that the Office properly assessed a reduction of 61 days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of the Notice of Allowance and Issue Fee Due in response to a Reply (Notice of Appeal), filed October 8, 2008. The reduction commenced February 9, 2008, the day after the date that is four months after the Reply was filed, and ended April 10, 2009, the mailing date of the Notice

of Allowance and Issue Fee Due in response the Reply. This period, however, overlaps with the "B" period of delay.

As to the "B" delay, the period is 1055 days, not 748 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), and ends on the day before the RCE was filed, or 1055 days, but not including the number of days beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, and ending on the date of mailing of the non-final Office action, March 29, 2005, or 105 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Thus, the net "B" delay period is 950 days (1055 days – 105 days), not 1055 days.

As to Applicant delay, a review of Office records confirms that a Reply to the Notice to Comply With Sequence Disclosures, mailed September 28, 2001, was filed on January 29, 2002, four (4) months and 32 days after the Notice was mailed. A reduction of 32 days pursuant to 37 CFR 1.704(b) was properly assessed to Applicant. Thereafter, on February 8, 2002, the Office mailed an Office communication informing Applicant of deficiencies in the January 29, 2002 Reply. Applicant filed a Reply including a Sequence Listing on March 12, 2002. Pursuant to 37 CFR 1.704(c)(7), a reduction of 42 days, beginning on the day after the reply having an omission was filed, January 30, 2002, and ending on the date that the reply or other paper correcting the omission was filed, March 12, 2002, was properly assessed to Applicant.

In response to the Reply filed September 10, 2001, this Office mailed a non-final Office action on May 31, 2002. A review of the Office action reveals that the Office action also addressed the Sequence Listing filed March 12, 2002, informing Applicants of a deficiency not previously noted, and re-setting the period for reply. Thereafter, on December 9, 2002, Applicants filed a Reply, including a Sequence List. The reply was filed three months and 100 days after the reply was due, and a reduction of 100 days pursuant to 37 CFR 1.704(b) was properly assessed to Applicant. In response to an Examiner's Interview, Applicant's thereafter filed a Sequence List on April 8, 2003. Pursuant to 37 CFR 1.704(c)(7), a reduction of 120 days, beginning on the day after the reply having an omission was filed, December 10, 2002, and ending on the date that the reply or other paper correcting the omission was filed, April 8, 2003, was properly assessed to Applicant.

Further as to Applicant delay, Patentee provides that the Office errantly failed to assess a reduction in connection with the filing of a Reply to the non-final Office action mailed May 31, 2002, on December 9, 2002. However, as noted above, a reduction of 100 days pursuant to 37 CFR 1.704(b) was properly assessed to Applicant.

In view of the foregoing, the correct patent term adjustment is 390 days (285 days "A" delay + 950 days "B" delay - 784 days Applicant delay - 61 days overlap (A & B)).

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days,

Patent Number: 7,576,059 Application No. 09/772607

Page 4

whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by three hundred ninety (390) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek Woods Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,576,059 B2

DATED

: August 18, 2009

INVENTOR(S): Jonassen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [\*] Notice: under 35 USC 154(b) by 364 days.

Delete the phrase "by 364 days" and insert – by 390 days--

Please increase PTA by 26 days for B delay.

Fee paid and timely filed.

B 
$$Max = 1055$$

$$B Ded = 105 (Appeal)$$

B Net = 
$$950$$

$$A = 285$$

$$C = )$$

$$App = 784$$

Overlap 
$$(A&B) = 61$$

$$285 = 950 + 0 - 784 - 61 = 390$$

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

7,576,059 B2

DATED

: August 18, 2009

INVENTOR(S): Jonassen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 364 days.

Delete the phrase "by 364 days" and insert – by 390 days--

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERC

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN

EXPIRED PATENT (37 CFR 1.378(c))

Patent Number

| Source Date | Application | Filing Date | Docket Number (if applicable)

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing [	Date -MM-DD)	Docket Number (if applicable)		
6,389,670	2002-05-21	09/772,898	2001-01	1-31			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
SMALL ENTITY  X Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.							
LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS  Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)							
NOT Small Entity			Small E	Small Entity			
Fee Code  3 ½ year (1551)		0	Fee 3 ½ year	Code (2551)			
○ 7½ year	(1552)		•	7 ½ year	(2552)		
	(1553)		0	11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must	be paid as	a condition of accepting unintentionally delayed payment		
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.							
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL							
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED							
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES							
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."							
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
An attorney or agent registered to practice before the Patent and Trademark Office							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; all of whom are signing this e-petition							
The assignee of record of the entire interest							

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	//Donald E. Hasse//	Date (YYYY-MM-DD)	2010-09-15		
Name	Donald E. Hasse	Registration Number	29387		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

6389670 In re Patent No.

May 21,2002

Issue Date:

Application No. 09772898

January 31,2001 Filed:

Attorney Docket No. BHT/3136/11

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

September 15,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 15,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LAW OFFICES OF JOHN D. GUGLIOTTA, P.E., ESQ 202 DELAWARE BUILDING 137 SOUTH MAIN STREET AKRON, OH 44308

MAILED

JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of

Michael TOMCZYK

Application No. 09/773,209

Filed: January 31, 2001

Attorney Docket 905

**ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 5, 2007, to revive the above-identified application.

#### The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 28, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 29, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fees as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) 2.

With respect to item 2: A review of the record shows that the required payment of \$1865.00(petition fee, issue fee, and publication fee), submitted with the petition, and to be taken from Deposit Account 07-2380, could not be completed because of insufficient funds. Accordingly, no consideration on the merits can be given until the required fee is remitted.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

Thurman Page

Petitions Examiner
Office of Petitions

cc: PATENT, COPYRIGHT & TRADEMARK LAW GROUP, LLC

430 WHITE POND DRIVE

**SUITE 200** 

**AKRON, OH 44320** 

# SPE RESPONSE FOR CERTIFICATE OF CORRECTION

		<b>Paper No</b> .:0702		
DATE	: August 20, 2010			
TO SPE OF	: ART UNIT 2617			
SUBJECT	: Request for Certificate of Correct	ction on Patent No.: 7236793		
A response is	requested with respect to the accom	panying request for a certificate of correction.		
Certificates	ete this form and return with file, of Correction Branch - PK 3-910 7590 - Tel. No. 305-8201	<u>-</u>		
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.				
Thank You F	or Your Assistance	Certificates of Correction Branch		
	for issuing the above-identified on the appropriate box.	correction(s) is hereby:		
□ Ар	proved	All changes apply.		
⊠ Ар	proved in Part	Specify below which changes <b>do not</b> apply.		
☐ De	nied	State the reasons for denial below.		
Comments:				
Amendment to the Drawings is approved DO NOT ENTER: Specification Item - "At column 5, line 35, before the word "being" delete "there", and insert therefortheir" DOES NOT APPLY				
		SPE: /CHARLES N APPIAH/		

PTOL-306 (Rev. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

John C. Kerins MILES & STOCKBRIDGE P.C. Suite 500 1751 Pinnacle Drive McLean VA 22102

**MAILED** 

OCT 03 2011

OFFICE OF PETITIONS

In re Patent No. 6,571,443

Issued: June 3, 2003

Application No. 09/773,498

Filed: February 2, 2001

Attorney Docket No. T2264-906790

ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DI	D) Docket Number (if applicable)
6,481,564	2002-11-19	09/773,683	2001-01-31	135691-1005
of the actual U.S. a 1.366(c) and (d).				identify: (1) the patent number and (2) the application number fee(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small en	tity status. See 37	' CFR 1.27.
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	NTITY STATUS nall entity status.	See 37 CFR 1.27(g	g)
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code ar (2551)
7 ½ year	(1552)		● 7 ½ yea	ar (2552)
11 ½ year	r (1553)		11 ½ ye	ear (2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid	as a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN I	PAYMENT OF THI	E MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE I	DELAYED PAYM	ENT OF THE MAIN	NTENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	FORY OR SIGNAT	FORIES
	states: "Any petition und fice, or by the patented			n attorney or agent registered to practice before the Patent erest."
I certify, in accordance with 37 CFR 1.4(d)(4) that I am				
An attorney	or agent registered to	practice before the	e Patent and Trade	emark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission or	n behalf of all the other patentees.
A joint pater	ntee; all of whom are si	igning this e-petition	on	
The assignee of record of the entire interest				

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Andre M. Szuwalski/	Date (YYYY-MM-DD)	2011-05-27		
Name	Andre M. Szuwalski	Registration Number	35701		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



## UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6481564

Issue Date:

November 19,2002

Application No. 09773683

Filed:

January 31,2001

Attorney Docket No. 40695-11

May 27,2011

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

May 27,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Paper No.

HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET NY 11791

MAILED

NOV 1 5 2010

**OFFICE OF PETITIONS** 

In re Patent No. 7172759

Issue Date: 02/06/2007

Application Number: 09/773866

Filing or 371(c) Date: 02/01/2001

Attorney Docket Number: 294-379

**NOTICE** 

This is in response to the letter concerning acceptance of a fee deficiency submission under 37 CFR 1.28 filed on September 1, 2010.

The letter is not properly signed.

37 CFR 1.33(b) requires that amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A patent practitioner of record appointed in compliance with § 1.32(b);
- (2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants ( $\S$  1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The letter does not appear to be signed by a proper party in accordance with 37 CFR 1.33. Further, if the paper is to be signed by an assignee in accordance with 37 CFR 3.71(b), a statement in compliance with 37 CFR 3.73(b) must be filed that is signed by a party who is authorized to act on behalf of the assignee. No such statement has been filed.

Any papers filed in the USPTO, including a fee deficiency submission under 37 CFR 1.28, must be signed in accordance with 37 CFR 1.33(b). Accordingly, it is recommended that patentees submit a properly signed request under 37 CFR 1.28.

The Office acknowledges receipt of payment of \$490.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX: (571)273-8300

Attn: Office of Petitions

By hand: Customer Service Window

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

A reply may also be filed via the EFS-Web system of the USPTO.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood

Attorney

Office of Petitions



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Paper No.

HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET NY 11791

**MAILED** 

APR 08 2011

In re Patent No. 7,172,759

OFFICE OF PETITIONS

Issue Date: 02/06/2007

NOTICE

Application Number: 09/773,866

Filing or 371(c) Date: 02/01/2001

Attorney Docket Number: 294-379

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patents under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

Douglas Wood Attorney

Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION Paper No.: \_\_\_\_ DATE : \_\_\_\_\_\_ February 9, 2011 : ART UNIT \_\_\_\_\_**2629 SPE** TO SPE OF SUBJECT : Request for Certificate of Correction for Appl. No.: <u>09/773.870</u> Patent No.: <u>RE40,771 E</u> Please respond to this request for a certificate of correction within 7 days. **FOR IFW FILES:** Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed. Please complete the response (see below) and forward the completed response to scanning using document code COCX. **FOR PAPER FILES:** Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to: **Certificates of Correction Branch (CofC)** Randolph Square Building 2800 South Randolph Street Arlington, VA 22206 Should claim 18 be amended as requested by applicant inserting the text "liquid crystal display device comprising: a"? Antonio Johnson See COCIN dated 01-26-2011 **Certificates of Correction Branch** (571)272-0483 Thank You For Your Assistance The request for issuing the above-identified correction(s) is hereby: Note your decision on the appropriate box. X Approved All changes apply. ☐ Approved in Part Specify below which changes do not apply. State the reasons for denial below. □ Denied Comments: \_\_ SPE A.EISEN Art Unit 2629

/ALEXANDER EISEN/





Commissioner for Patents.
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 12

MS. ROSEANN B. CALDWELL BENNETT JONES LLP 4500, 855 - 2ND STREET S.W. CALGARY AB T2P 4K7 CANADA

MAILED

SFP 22 2010

OFFICE OF PETITIONS

In re Patent No. 6,499,433

Issue Date: 12/31/2002

Application Number: 09/774,883

Filing Date: 02/01/2001

Attorney Docket Number: 47092-3

DECISION ON PETITION

This is a decision on the petition filed on June 7, 2010, under 37 CFR § 1.378(b) to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued on December 31, 2002. The first maintenance fee could have been paid from December 31, 2005, through June 30, 2006, or, with a surcharge during the period from July 1 through December 31, 2006. Accordingly, the patent expired at midnight December 31, 2006, for failure to timely submit the maintenance fee.

Petitioner, pro se, asserts:

No statements were received by myself whereas I was not in the country and office location was moved in 2003.

A petition to accept the delayed maintenance fee under 35 U.S.C. \$ 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks requirement (1).

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable".1

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses identical language (i.e. "unavoidable delay").  $^2$  Decisions reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.  $^3$  In this regard:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or

<sup>&</sup>lt;sup>1</sup> 35 U.S.C. § 41(c)(1).

Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1989)).

Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used by prudent and careful men in relation to their most important business").

imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.<sup>4</sup>

A patent owner's failure to pay a maintenance fee may be considered to have been "unavoidable" if the patent owner "exercised the due care of a reasonably prudent person." This determination is to be made on a "case-by-case basis, taking all the facts and circumstances into account."6 Unavoidable delay under 35 U.S.C. § 41(b) is measured by the same standard as that for reviving an abandoned application under 35 U.S.C. § 133. Under 35 U.S.C. § 133, the Director may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to have been "unavoidable". Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. 8 However, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. In view of <u>In re Patent No. 4,409,763</u>, this same standard will be applied to determine whether "unavoidable" delay within the meaning of 37 CFR 1.378(b) occurred.

This petition does not satisfy the requirement of 37 CFR 1.378(b)(3). The statements presented in the petition fail to

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Bay v. Lehman, 55 F.3d 606, 608-09 (Fed.Cir.), cert. denied, -- U.S. ---, 116 S.Ct. 304, L.Ed.2d 209 (1995).

Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).
In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (PTO Comm'r 1988).

Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

<sup>&#</sup>x27;Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

satisfy the showing required to establish unavoidable delay within the meaning of 37 CFR 1.378(b).

As 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. That is, an adequate showing that the delay was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. 11

A delay resulting from a lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP does not constitute an "unavoidable" delay. 12 As the showing of record does not rise to the level of unavoidable delay, the petition will be dismissed.

Petitioner's contention that he did not receive any notification from the USPTO that the maintenance fee was due is not well taken. A patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. 13 Under the statute and regulations, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. The Office mailing of Maintenance Fee Reminders is carried out strictly as a courtesy. Accordingly, it is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and/or the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. 14

 $<sup>^{10}</sup>$  Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

<sup>11 &</sup>lt;u>Id</u>.

<sup>12</sup> See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ 1130, 1132 (N.D. Ind. 1987), Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

<sup>13</sup> See Patent No. 4,409,763, supra; see also "Final Rules for Patent Maintenance Fees" 49 Fed. Reg. 34716, 34722-34723 (August 31, 1984), reprinted in 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984).

Rydeen v. Quigg, 748 F. supp. at 900.

In summary, while petitioner's misunderstanding regarding notification of the responsibility to pay maintenance fees is certainly unfortunate, the showing of record does not support a finding of unavoidable delay. A delay resulting from a lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP does not constitute an "unavoidable" delay. Further, with regard to petitioner's contention that he was out of the country and that his office location had moved, the showing of record is that petitioner was preoccupied with other matters. Petitioner's preoccupation with other matters which took precedence over the above-identified maintenance fee does not constitute unavoidable delay. 16

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for expedited consideration is not refundable. The \$400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the address noted below.

The address in the petition is different than the correspondence address. A copy of this decision will be mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. Petitioner should file a change of correspondence address if the correspondence address is to be updated.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ 1130, 1132 (N.D. Ind. 1987), Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

Patent No. 6,499,433

By hand:

Customer Service Window

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at 571-272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

Cc:

ROBERT W. NOTENBOMER 1855 2<sup>ND</sup> AVENUE DUMORE AB T1B 0K3

CANADA

Encl: PTO/SB/123

PTO/SB/123 (11-08)
Approved for use through 11/30/2011. OMB 0651-0035
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are	required to respond to a collection of infor	mation unless it displays a valid OMB control number.
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I am the:		

This collection of information is required by 37 CFR 1.33. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Post Issue, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms

Telephone

Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

Attorney or agent of record. Registration Number

forms are submitted.

if more than one signature is required, see below\*

Signature
Typed or
Printed Name

\*Total of

## **Privacy Act Statement**

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- A record from this system of records may be disclosed, as a routine use, in the course of
  presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to
  opposing counsel in the course of settlement negotiations.
- A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
- A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

## KIMBELL GIN MACHINERY COMPANY 226 NE LOOP 289 LUBBOCK TX 79403

MAILED
NOV 2 9 2010
OFFICE OF PETITIONS

In re Patent No. 6,412,146

Issue Date: July 02, 2002

Application No. 09/774,978

Filed: January 31, 2001

Attorney Docket No.

Paper No. 8

**DECISION ON PETITION** 

This is a decision on the submission filed September 22, 2010, which is being treated as a petition under 37 CFR 1.378(c), to accept the delayed payment of a maintenance fee for the above-identified patent.

#### The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

This patent expired at midnight on July 02, 2010 for failure to pay the seven and one-half maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1), (2) & (3) above. There is no statement about the delay being unintentional. It is noted that the submission is signed by Rita Kimbell who is neither an inventor nor an attorney registered to practice before the office. Also, it is not clear from the file record if Rita Kimbell is authorized to act on behalf of the assignee. In submitting a renewed petition, petitioner is strongly urged to use the attached form PTO/SB/66. Petitioner should note that an assignee must comply with the requirements of 37 CFR 3.73(b). See MPEP § 324.



The total amount maintenance fee that is due (for a small entity) is \$1240 and a surcharge of \$1640 is required for unintentional delay. Petitioner has paid \$515 for the maintenance fee. The balance of \$2765 (that includes the \$400 fee for a renewed petition) is now due and must be included with a properly signed renewed petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

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By hand:

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Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Tredelle Jackson at 571-272-2783.

Ramesh Krishnamurthy Petitions Examiner

Office of Petitions

Encl: PTO/SB/66



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United States Patent and Trademark Office
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# KIMBELL GIN MACHINERY COMPANY 226 NE LOOP 289 LUBBOCK TX 79403

MAILED
MAR 2 8 2011
OFFICE OF PETITIONS

Paper No. 11

In re Patent No. 6,412,146 :

Issue Date: July 02, 2002

Application No. 09/774,978 : DECISION ON PETITION

Filed: January 31, 2001

Patentee(s): L. Todd Ramsey et al

# REQUIREMENT FOR ADDITIONAL INFORMATION AND/OR FEE(S) DUE

A renewed petition under 37 CFR 1.378(c) was filed on December 30, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent. It is noted that a statement under 3.73(b) signed by Rita Kimbell, was filed on March 07, 2011. However, the statement as filed is unacceptable, since it does not state the Reel and Frame number where the assignment has been recorded. Petitioner should note that an assignee must comply with the requirements of 37 CFR 3.73(b). See MPEP § 324. A copy of the form PTO/SB/96 is enclosed herewith for petitioner's use.

The response should include a cover letter entitled "Response to Requirement for Additional Information and/or Fee(s) Due."

At the end of the two-month period specified above, a decision will be rendered on the renewed petition under 37 CFR 1.378, including any supplemental information submitted in response to this Requirement for Additional Information. Thereafter, no further reconsideration or review of this matter will be undertaken.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

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at (866) 217-9197)

Any questions concerning this matter may be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy

Petitions Examiner
Office of Petitions

Enclosure: PTO/SB/96

cc:

RITA C. KIMBELL

P.O. BOX 1356

**LUBBOCK TX 79408** 

PTO/SB/96 (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

U.S. Patent and Trademark Unice; U.S. DEPARIMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)			
Applicant/Patent Owner:			
Application No./Patent No.:	cation No./Patent No.: Filed/Issue Date:		
Titled:			
, a			
(Name of Assignee) (Type of Assignee)	ssignee, e.g., corporation, partnership, university, government agency, etc.		
states that it is:			
1. the assignee of the entire right, title, and interest in;			
2. an assignee of less than the entire right, title, and interest in (The extent (by percentage) of its ownership interest is	%); or		
3. the assignee of an undivided interest in the entirety of (a con	nplete assignment from one of the joint inventors was made)		
the patent application/patent identified above, by virtue of either:			
A. An assignment from the inventor(s) of the patent application, the United States Patent and Trademark Office at Reel copy therefore is attached.	/patent identified above. The assignment was recorded in, Frame, or for which a		
OR	the total desired above to the average assigned as follows:		
B. A chain of title from the inventor(s), of the patent application/			
1. From:	,		
The document was recorded in the United States  Reel, Frame	Patent and Trademark Office at, or for which a copy thereof is attached.		
2. From:	То:		
The document was recorded in the United States			
Reel, Frame	or for which a copy thereof is attached.		
3. From:	То:		
The document was recorded in the United States			
	, or for which a copy thereof is attached.		
Additional documents in the chain of title are listed on a sur	oplemental sheet(s).		
As required by 37 CFR 3.73(b)(1)(i), the documentary evidence or concurrently is being, submitted for recordation pursuant to 37			
[NOTE: A separate copy (i.e., a true copy of the original assignment accordance with 37 CFR Part 3, to record the assignment in the	ment document(s)) must be submitted to Assignment Division in records of the USPTO. <u>See</u> MPEP 302.08]		
The undersigned (whose title is supplied below) is authorized to act on l	behalf of the assignee.		
Signature	Date		
Printed or Typed Name	Title		

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

### **Privacy Act Statement**

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
- 2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record
- A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
   A record related to an International Application filed under the Patent Cooperation Treaty in
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent
- A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MAILED

KIMBELL GIN MACHINERY COMPANY 226 NE LOOP 289 LUBBOCK TX 79403 JUN 15 2011

OFFICE OF PETITIONS

In re Patent No. 6,412,146

Issue Date: July 02, 2002 : DECISION ON PETITION

Application No. 09/774,978

Filed: January 31, 2001

Patentee(s): L. Todd Ramsey et al

### REQUIREMENT FOR ADDITIONAL INFORMATION AND/OR FEE(S) DUE

A renewed petition under 37 CFR 1.378(c) was filed on April 18, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent. It is noted that a statement under 3.73(b) signed by Rita Kimbell, was filed on April 18, 2011. However, the statement as filed is unacceptable, since it does not state the assignee of the entire right, title and interest in the application. Petitioner should note that an assignee must comply with the requirements of 37 CFR 3.73(b). See MPEP § 324.

The response should include a cover letter entitled "Supplemental Response to Requirement for Additional Information and/or Fee(s) Due."

At the end of the two-month period specified above, a decision will be rendered on the renewed petition under 37 CFR 1.378, including any supplemental information submitted in response to this Requirement for Additional Information. **Thereafter, no further reconsideration or review of this matter will be undertaken.** 

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By internet:

**EFS-Web** 

www.uspto.gov/ebc/efs\_help.html (for help using EFS-Web call the Patent Electronic Business Center

at (866) 217-9197)

Any questions concerning this matter may be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy Petitions Examiner

Office of Petitions

cc:

RITA C. KIMBELL

P.O. BOX 1356

**LUBBOCK TX 79408** 

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspio.gov

KIMBELL GIN MACHINERY COMPANY 266 NE LOOP 289 LUBBOCK TX 79403

MAILED

SEP 262011

OFFICE OF PETITIONS

In re Patent No. 6,412,146

Issue Date: July 2, 2002

Application No. 09/774,978

Filed: January 31, 2001

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed July 18, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 3, 2010 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

The patent file is being forwarded to Files Repository.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions



# United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,038	38 02/01/2001 Wayne E. Manska			8337
7590 11/07/2011 Wayne E. Manska 3168 Deer Fern Ct.			EXAM	INER
			LACYK,	JOHN P
Arcata, CA 955	nta, CA 95521	•	ART UNIT	PAPER NUMBER
			3735	
			MAIL DATE	DELIVERY MODE
			11/07/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WAYNE E. MANSKA 3168 DEER FERN CT. ARCATA, CA 95521

In re Application of

WAYNE E. MANSKA et al

Application No. 09/775,038

Filed: February 1, 2001

Issue Date: October 20, 2009

Attorney Docket No.

**DECISION ON PETITION** 

This is a decision on the petition under 37 CFR 1.48(d), filed, July 15, 2008, to correct the inventorship in the instant application. Since the application has issues, the petition will be considered under the provisions of 37 CFR 1.324.

The petition is **DISMISSED**.

Petitioner requests that the U.S. Patent and Trademark Office (Office) update their records to delete the name **PHYLLIS D. MANSKA** as an inventor. Petitioner submits that her contribution to the invention related to method claims which have been withdrawn by election filed November 8, 2005.

In this application, given the facts, the rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require that each petition to correct inventorship under 37 CFR 1.324 be accompanied by a statement from the current named inventors either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change, and the petition fee as set forth in 37 CFR §1.20(b).

A review of the file indicates that neither of the above requirements was filed with the petition. Accordingly, the petition must be dismissed.

Any questions concerning this matter may be directed to the undersigned at (571) 272-4112.

/Miranda Le/
Miranda Le
Supervisory Patent Examiner
Art Unit 3735

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
JAN 2 6 2012
OFFICE OF PETITIONS

NEIL K NYDEGGER NYDEGGER & ASSOCIATES 348 OLIVE STREET SAN DIEGO CA 92103

In re Patent No. 6,530,905 Issue Date: March 11, 2003

Application No. 09/775,239 : DECISION ON PETITION

Filed: February 1, 2001 : Patentee: Hoomana Asbaghi :

This is a decision on the petition under 37 CFR 1.378(b), filed January 4, 2012, to accept the unavoidably delayed payment of the maintenance fee for the above-identified patent.

The petition under 37 CFR 1.378(b) is **DISMISSED**.

The above-identified patent issued March 11, 2003. Accordingly, the first maintenance fee could have been paid during the period from March 11, 2006 through September 11, 2006 without surcharge, or with a late payment surcharge during the period from September 12, 2006 through March 11, 2007. No maintenance fee having been received, the patent expired on March 12, 2007.

## Applicable Rule, Case Law, Facts, and Analysis:

37 CFR 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee must include:

- (1) The required maintenance fee set forth in 37 CFR
  1.20(e) through (g);
- (2) The surcharge set forth in 37 CFR 1.20(i)(1); and
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

The instant petition does not meet requirement (3) above.

With regard to requirement (3), acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 USC 133. This is a very stringent standard. Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. In addition, decisions are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

Here, petitioner sets forth the following facts in support of his assertion of unavoidable delay. According to petitioner, Nydegger and Associates (hereinafter "Nydegger"), the firm who prosecuted the application, sent a letter to the Patentee on August 1, 2006, reminding Patentee of the requirement to pay the maintenance fee. The letter contained a space at the bottom for Patentee to provide his instructions. Patentee could either place a check mark by the line that read "Please pay the maintenance fee" or could place a check mark by the line that

read "Please do not pay the maintenance fee and allow this case to go abandoned". On August 14, 2006, Nygegger received the letter back from Patentee, with a check mark by the line that read "Please do not pay the maintenance fee and allow this case to go abandoned."

As such, Nydegger did not pay the maintenance fee, and the patent expired on March 12, 2007. No further action was taken with respect to his patent by either Nydegger or the Patentee until September 16, 2011. On that date, the Patentee called Nydegger to inquire about a related European patent for the same invention. Nydegger provided Patentee with a copy of the August 14, 2006 letter, showing that Patentee had checked the box instructing Nydegger not to pay the maintenance fee. At that point, the Patentee claimed that he had checked the wrong box when responding to Nydegger, and has included a statement affirming such with the instant petition. The statement asserts that English is not the Patentee's first language.

Here, the failure to check the correct box and provide instructions for Nydegger to pay the maintenance fee, while arguably unintentional, was not unavoidable within the meaning of 37 CFR 1.378(b). Rather, the error is one that could have been avoided with the reasonable exercise of due care. Moreover, the lack of any billing from Nydegger to Patentee for payment of the first maintenance fee would have prompted a prudent and careful person to make inquiry of Nydegger sooner than September 16, 2011, a period of nearly 3 years after the maintenance fee letter was sent.

#### Conclusion:

Any request for reconsideration of this decision <u>must</u> be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the \$400 petition fee set forth in §1.17(f). <u>After decision on the petition for reconsideration</u>, no further reconsideration or review of the matter will be undertaken by the Commissioner. Accordingly, on request for reconsideration, it is extremely important that petitioner supply <u>any</u> and <u>all</u> relevant information and documentation in order to meet his burden of showing unavoidable delay.

If on request for reconsideration, the delayed payment of the maintenance fee is not accepted, then \$2,690 submitted for the maintenance fee and the surcharge set forth in \$1.20(i) are subject to refund following the decision on the petition for reconsideration, or after the expiration of the time for filing

such a petition for reconsideration, if none is filed. Petitioner may request a refund of the maintenance fee and surcharge by writing to: Mail Stop 16, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of the last decision rendered should accompany the request for refund. The \$400 fee for requesting reconsideration is not subject to refund.

Further correspondence should be addressed as follows:

By mail:

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria VA 22313-1450

By FAX:

(571)273-8300

Attn: Office of Petitions

Telephone inquiries specific to this decision may be directed to the undersigned at (571)272-3207.

lyg

Cliff Congo Petitions Attorney Office of Petitions



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6464709

Issue Date:

October 15,2002

Application No. 09775878

Filed:

Attorney Docket No. VASC001CON

February 2,2001

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

December 7,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

December 7,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,464,709	2002-10-15	09/775,878	2001-02-02	62364-393129
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY    X   Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.				
LOSS OF ENTITL	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS	-	17.1.27.
NOT Small Entity			Small Entity	
Fee	Code		Fee	Code
3 ½ year	(1551)		3 ½ year	(2551) (2552)
7 ½ year	(1552)		7 ½ year 11 ½ year	(2553)
O 11 ½ year	· (1553)		11 /2 year	(2333)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.			
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL				
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED				
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES				
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."				
I certify, in accordance with 37 CFR 1.4(d)(4) that I am				
An attorney or agent registered to practice before the Patent and Trademark Office  A sole patentee.				
A sole patentee				
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.				
A joint patentee; all of whom are signing this e-petition				
The assignee of record of the entire interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner		
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Michael G. Verga/	Date (YYYY-MM-DD)	2011-12-07
Name	Michael G. Verga	Registration Number	39410

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

ANSEL M. SCHWARTZ ONE STERLING PLAZA SUITE 304 201 N. CRAIG STREET PITTSBURGH, PA 15213

MAILED

MAR 2 4 2011

OFFICE OF PETITIONS

In re Application of Mark W. Perlin Application No. 09/776,096 Filed: February 2, 2001 Attorney Docket No.: PERLIN-9

**ON PETITION** 

This is a decision in response to the petition, filed January 25, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 14, 2010. A Notice of Abandonment was mailed on November 17, 2010. On January 25, 2011, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) a proposed reply in the form of an amendment; (2) the petition fee of \$810; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 1631 for appropriate action by the Examiner in the normal course of business on the response filed January 25, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

# MAILED

SEP 07 2010

#### **OFFICE OF PETITIONS**

WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON MA 02210-2206

In re Patent No. 7,585,847

Bratzler et al.

Issue Date: September 8, 2009 Application No. 09/776,479

Filed: February 2, 2001

Attorney Docket No. C1037/7013

(HCL/MAT)

Title: IMMUNOSTIMULATORY

NUCLEIC ACIDS FOR THE TREATMENT

OF ASTHMA AND ALLERGY

: VACATED DECISION AND DECISION

: ON REQUEST FOR

: RECONSIDERATION ON

PATENT TERM ADJUSTMENT

T :

This decision vacates the petition decision mailed on April 21, 2010. This decision addresses the Request for Reconsideration of Patent Term Adjustment filed May 19, 2010.

Upon review of the record it is determined that no error was found in the petition decision mailed on March 15, 2010.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED TO THE EXTENT** it is extended or adjusted by **six hundred forty-seven (647)** days.

In light of the issuance of certificate of correction on May 4, 2010, a new certificate of correction is not required.

Telephone inquiries specific to this matter should be directed to Petitions Attorney, Charlema Grant at (571) 272-3215.

Anthor Knight

Director

Office of Petitions



### United States Patent and Trademark Office

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON MA 02210-2206

In re Patent No. 7,585,847

Bratzler et al.

Issue Date: September 8, 2009

Application No. 09/776,479 Filed: February 2, 2001

Attorney Docket No. C1037/7013

(HCL/MAT)

Title: IMMUNOSTIMULATORY

NUCLEIC ACIDS FOR THE TREATMENT

OF ASTHMA AND ALLERGY

# MAILED

DEC 13 2010

# **OFFICE OF PETITIONS**

NOTICE OF INTENT

: TO ISSUE CERTIFICATE OF

: CORRECTION

:

:

This decision addresses the issuance of the certificate of correction issued September 14.12010.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED TO THE EXTENT** it is extended or adjusted by **six hundred forty-seven (647)** days.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by six hundred forty-seven (647) days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney, Charlema Grant at (571) 272-3215.

Anthony Knight

Director

Office of Petitions

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

**PATENT** 

: 7,585,847 B2

DATED

: September 8, 2009

**DRAFT** 

INVENTOR(S): Bratzler et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [\*] Notice: under 35 USC 154(b) by 993 days

Delete the phrase "by 993 days" and insert - by 647 days--



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PLUMSEA LAW GROUP, LLC 10411 MOTOR CITY DRIVE SUITE 320 BETHESDA MD 20817

MAILED

SEP 27 2010

**OFFICE OF PETITIONS** 

In re Application of Alan J. Ying et al. Application No. 09/776,484 Filed: February 2, 2001 Attorney Docket No. 2962.005US1

**DECISION ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 1, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 2, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed December 2, 2009. Accordingly, the date of abandonment of this application is March 3, 2010.

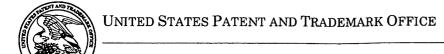
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1,510 and the publication fee of \$300, (2) the petition fee of \$1,620; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to the Office of Data Management for processing into a patent.

/JoAnne Burke/ JoAnne Burke Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

PLUMSEA LAW GROUP, LLC 10411 MOTOR CITY DRIVE SUITE 320 BETHESDA MD 20817

MAILED

JUL 27 2011

OFFICE OF PETITIONS

In re Patent No. 7,831,449

Issue Date: November 9, 2010

Application No. 09/776,484

Filed: February 2, 2001

Attorney Docket No. 74-1003

**DECISION ON PETITION** 

This is a decision on the Request To Correct Issue Of Patent To Assignee Under 37 C.F.R. 3.81(b) and Request For Certificate Of Correction Under 35 U.S.C. §255, filed February 22, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B and such error was a typographical error. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Thompson Reuters (Healthcare) Inc."

to:

-- Thomson Reuters (Healthcare) Inc.--

37 CFR 3.81(b), effective June 25, 2004, reads:

After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

U.S. Patent No. 7,831,449 Application No. 09/776,484 Decision on Petition under 37 CFR §3.81(b) Page 2

The requisite \$100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite \$130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), are required. Therefore, since the petition was accompanied deposit account authorization, the fees have been charged. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,831,449.

Cheryl Gibson-Baylor
Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SOFER & HAROUN, L.L.P. 317 Madison Avenue Suite 910 New York NY 10017

MAILED
FEB 0 8 2011
OFFICE OF PETITIONS

In re Patent No. 7,272,670 Issue Date: September 18, 2007 Application No. 09/777,003 Filed: February 5, 2001 Attorney Docket No. 655-0012C

**DECISION ON PETITION** 

This is a decision on the Request For Correction Of Patent Under Rule 37 CFR 1.183, filed October 14, 2010, which is being treated as a Petition Under 37 CFR 3.81(b) to add ---Equator Technologies, Inc., Campbell, CA-- to the Title Page of the Patent via a Certificate of Correction.

The petition under 37 CFR §3.81(b) is **DISMISSED**.

Petitioner requests that the present Petition was submitted to add –Equator Technologies, Inc., Campbell, CA-- on the previously submitted PTOL-85B and such error was inadvertent.

37 CFR 3.81(b), effective June 25, 2004, reads:

After payment of the issue fee. Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The Petition Under 37 CFR §3.81(b) was not accompanied by a Certificate of Correction Form (PTO/SB/44) as required by §3.81(b). See also MPEP 1481.01. Since petitioner has failed to comply with the provisions of 37 CFR §3.81(b), the petition is dismissed.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Cheryl Gibson-Baylor Petitions Examiner

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KENNETH C. SPAFFORD 708 SMITHSON AVENUE ERIE PA 16511 MAILED

JUL 192011

OFFICE OF PETITIONS

In re Patent No. 6,687,108

Issued: February 3, 2004

Application No. 09/777,021 : ON PETITION

Filed: February 5, 2001

Attorney Docket No. X2YA0121U-US

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 22, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

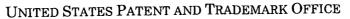
Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Additionally, the current large entity filing fee is \$850.00 not \$1090.00. Petitioner has submitted an unnecessary additional \$240.00 which will be refunded to petitioner's credit card in due course.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850 MAILED DEC 23 2011

OFFICE OF PETITIONS

In re Patent No. RE37836

Issue Date: September 10, 2002

Application No. 09/777,673

Filed: February 7, 2001 Attorney Docket No. 039472.99 ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed October 17, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on September 10, 2010 for failure to pay the 11 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.

/AMW/ April M. Wise Petitions Examiner Office of Petitions

cc:

STEVEN M. GRUSKIN 2100 PENNSYLVANIA AVENUE, NW WASHINGTON, DC 20037 Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Number	Issue Date	Application	Filing Date	Docket Number (if applicable)
Patent Number	(YYYY-MM-DD)	Number	(YYYY-MM-DD)	Docket Number (ii applicable)
6988277	2006-01-17	09/778,234	2001-02-06	2-409-T
of the actual U.S. a 1.366(c) and (d).				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small en	tity status. See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee  3 ½ year	Code (2551)
<ul><li>3 ½ year</li><li>7 ½ year</li></ul>	(1551) (1552)		7 ½ year	(2552)
11 ½ year	, ,		11 ½ year	
SURCHARGE	uired by 37 CER 1 20/	i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
of the maintenance		1)(2) (1 cc 00dc 1	1000) must be paid at	of document of docephing difficulties and delayed payment
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		his petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	REQUEST THAT THE	DELAYED PAYM	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNA	TORY OR SIGNATO	RIES
	tates: "Any petition un- fice, or by the patented			attorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am		
An attorney	or agent registered to	practice before th	e Patent and Tradem	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sigr	n this submission on I	pehalf of all the other patentees.
A joint pater	ntee; all of whom are s	igning this e-petiti	on	
The assigne	ee of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Norton R. Townsley/	Date (YYYY-MM-DD)	2010-12-28
Name	Norton R. Townsley	Registration Number	33608

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6988277

Issue Date:

January 17,2006

Application No. 09778234

Filed:

February 6,2001

Attorney Docket No. PM4

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

December 29,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

December 29,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: February 28, 2012

In re Application of:

G. Nelson

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 09778474

Filed : 07-Feb-2001

Attorney Docket No: TAN-2-1495.01.US

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed February 28, 2012, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.** 

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2467 for processing of the request for continuing examination under 37 CFR 1.114.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web		PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce	
Electronic Petition Request	PETITION TO WITHDRAW AN APPLIC THE ISSUE FEE UNDER 37 CFR 1.313	CATION FROM ISSUE AFTER PAYMENT OF	
Application Number	09778474		
Filing Date	07-Feb-2001		
First Named Inventor	G. Nelson		
Art Unit	2467		
Examiner Name	SABA TSEGAYE		
Attorney Docket Number	TAN-2-1495.01.US		
Title	MINIMAL MAINTENANCE LINK TO SUPPO	ORT SYNCHRONIZATION	
An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.			
APPLICANT HEREBY PETITIONS TO WI	THDRAW THIS APPLICATION FROM ISSUE	UNDER 37 CFR 1.313(c).	
are unpatentable, an amendment to claims to be patentable; (b) Consideration of a request for con	nims, which must be accompanied by an un such claim or claims, and an explanation as nitinued examination in compliance with §	nequivocal statement that one or more claims s to how the amendment causes such claim or 1.114 (for a utility or plant application only); or se in favor of a continuing application, but not a	
Petition Fee			
Applicant claims SMALL EN	FITY status. See 37 CFR 1.27.		
Applicant is no longer claim	ing SMALL ENTITY status. See 37 CFR 1.270	(g)(2).	
Applicant(s) status remains as SMALL ENTITY.			
Applicant(s) status remains as other than SMALL ENTITY			
Reason for withdrawal from issue			

One or more claims are unpate	ntable		
Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)			
Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).			
RCE request, submission, and fee.			
The RCE request ,submission,	I certify, in accordance with 37 CFR 1.4(d)(4) that:  The RCE request ,submission, and fee have already been filed in the above-identified application on		
Are attached.			
THIS PORTION MUST BE COMPLETE	ED BY THE SIGNATORY OR SIGNATORIES		
I certify, in accordance with 37 CFR	1.4(d)(4) that I am:		
<ul> <li>An attorney or agent registered in this application.</li> </ul>	An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.		
An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.			
A sole inventor			
A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors			
A joint inventor; all of whom are signing this e-petition			
The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71			
Signature	/Robert D. Leonard/		
Name	Robert D. Leonard		
Registration Number	Registration Number 57204		



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

MCCARTER MACHINE INC 1312 UNDERWOOD ROAD LA PORTE TX 77571

# MAILED

DEC 12 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,443,817

Issued: 09/03/2002

Application No. 09/778,525

Filed: 02/06/2001

Attorney Docket No. MCCARTER-1)

LETTER

This is in response to the communication filed October 28, 2011, and the "MAINTENANCE FEE TRANSMITTAL FORM" filed October 5, 2011.

The patent issued on September 3, 2002. The grace period for paying the 7.5-year maintenance fee expired on September 4, 2010.

Pursuant to 37 CFR 1.378(a), the Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, **upon petition**, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable or unintentional and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee.

Any petition to accept an unintentionally delayed payment of a maintenance fee filed under 37 CFR 1.378(c) must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and **must include**:

- (1) the required maintenance fee set forth in § 1.20(e)-(g);
- (2) the surcharge set forth in § 1.20(i)(2); and
- (3) a statement that the delay in payment of the maintenance fee was unintentional.

Lastly, a petition under 37 CFR 1.378(c) must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

On October 5, 2011, patentee attempted to pay \$1,425.00 for the maintenance fee due at 7.5 years. On October 13, 2011, the Office mailed a Notice of Non-Acceptance of Patent Maintenance Fee indicating that the maintenance fee payment was not accepted and no charge was applied to the credit card because the patent had expired. On October 28, 2011, the Office received a communication signed by only one of the patentees, Douglas R. McCarter, seeking reinstatement of the patent. The communication included payment of the \$1,425.00 maintenance fee and the \$1,640.00 surcharge where late payment was unintentional. The Office acknowledges receipt of fees totaling \$3,065.00.

It appears that patentee wishes to reinstate the patent under the provisions of 37 CFR 1.378(c). However, patentee did not file an appropriate petition under 37 CFR 1.378(c) or include a statement that the delay in payment of the maintenance fee was unintentional. Moreover, the communication was signed by only one of the patentees, Douglas R. McCarter. The Office records reveal that an assignment was recorded in the USPTO. Therefore, if Mr. McCarter is acting on behalf of the assignee, he must submit a Statement under 37 CFR 3.73(b).

It is recommended that patentee utilize the attached forms for filing a petition under 37 CFR 1.378(c) and making a Statement under 37 CFR 3.73(b). No additional fee is due.

A petition under 37 CFR 1.378(c) should be filed within **ONE (1) MONTH or THIRTY (30) DAYS**, whichever is longer, of the mailing of this letter in order to be considered timely.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Attn: Office of Petitions

By hand: Customer Service Window

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314 Telephone inquiries should be directed to the undersigned at 571-272-3211.

C. Y. Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions

Encl:

PTO/SB/66

PTO/SB/96



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCCARTER MACHINE INC 1312 UNDERWOOD ROAD LA PORTE TX 77571

# MAILED

JAN 17 2012

# OFFICE OF PETITIONS

In re Patent No. 6,443,817

Issued: 09/03/2002

Application No. 09/778,525

Filed: 02/06/2001

Attorney Docket No. MCCARTER-1:

ON PETITION

This is in response to the petition under 37 CFR 1.378(c) filed December 27, 2011.

The patent issued on September 3, 2002. The grace period for paying the 7.5-year maintenance fee expired on September 4, 2010.

Pursuant to 37 CFR 1.378(a), the Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable or unintentional and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee.

Any petition to accept an unintentionally delayed payment of a maintenance fee filed under 37 CFR 1.378(c) must be filed within twenty-four months after the six-month grace period provided in \$ 1.362(e) and must include:

- (1) the required maintenance fee set forth in § 1.20(e)-(g);
- (2) the surcharge set forth in § 1.20(i)(2); and
- (3) a statement that the delay in payment of the maintenance fee was unintentional.

Lastly, a petition under 37 CFR 1.378(c) must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. See 37 CFR 1.378(d).

On October 5, 2011, patentee attempted to pay \$1,425.00 for the maintenance fee due at 7.5 years. On October 13, 2011, the Office mailed a Notice of Non-Acceptance of Patent Maintenance Fee indicating that the maintenance fee payment was not accepted and no charge was applied to the credit card because the patent had expired. On October 28, 2011, the Office received a communication signed by only one of the patentees, Douglas R. McCarter, seeking reinstatement of the patent. The communication included payment of the \$1,425.00 maintenance fee and the \$1,640.00 surcharge where late payment was unintentional. The Office acknowledges receipt of fees totaling \$3,065.00.

On December 12, 2011, the Office mailed a letter to patentee in response to the communication of October 28, 2011, indicating that patentee did not file an appropriate petition under 37 CFR 1.378(c) or include a statement that the delay in payment of the maintenance fee was unintentional. Additionally, the Office noted that the communication was signed only by Douglas R. McCarter and advised patentee that if Mr. McCarter was acting on behalf of the assignee, he must submit a Statement under 37 CFR 3.73(b). The letter set a period of one (1) month or thirty (30) days to submit a petition under 37 CFR 1.378(c). No additional fees were required.

On December 27, 2011, patentee submitted a petition under 37 CFR 1.378(c) and a Statement under 37 CFR 3.73(b) which contained the typewritten name of Douglas R. McCarter but lacked his signature. On January 4, 2012, patentee submitted a Statement under 37 CFR 3.73(b) signed by Douglas R. McCarter in his capacity as Vice President. However, patentee has not filed a petition under 37 CFR 1.378(c) signed by Mr. McCarter to date.

Accordingly, the petition will not be treated on the merits until petitioner submits a petition under 37 CFR 1.378(c) containing the signature of a person(s) having authority to act such as Mr. McCarter in accordance with 37 CFR 1.378(d). Thus, the petition is dismissed.

A properly signed petition under 37 CFR 1.378(c) must be within **ONE (1) MONTH or THIRTY (30) DAYS**, whichever is longer, of the mailing of this letter in order to be considered timely. No additional fee is due.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Mail Stop Petition Randolph Building 401 Dulany Street Alexandria, VA 22314

Correspondence may also be submitted electronically via the Electronic Filing System.

Telephone inquiries should be directed to the undersigned at 571-272-3211.

# C. J. Donnell

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCCARTER MACHINE INC 1312 UNDERWOOD ROAD LA PORTE TX 77571 MAILED FEB 1 4 2012.

In re Patent No. 6,443,817

Issued: 09/03/2002

Application No. 09/778,525 : ON PETITION

Filed: 02/06/2001

Attorney Docket No. MCCARTER-1

This is in response to the petition under 37 CFR 1.378(c) filed January 26, 2012.

The patent issued on September 3, 2002. The grace period for paying the 7.5-year maintenance fee expired on September 4, 2010.

This petition was filed timely under the provisions of 37 CFR 1.378(c) because it was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e). Accordingly, the maintenance fee in this case is accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell Senior Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE CA 92614

MAILED

JUL 08 2011

In re Patent No. 6,907,405

Issued: June 14, 2005

Application No. 09/778,606

Filed: February 7, 2001

Attorney Docket Number:

TICKMA.40CPCCP1

OFFICE OF PETITIONS

ON PETITION

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 7, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

DATE	: <u>March 24. 2010</u>	
TO SPE OF SUBJECT	: ART UNIT <u>3761</u> : Request for Certificate of Co	orrection for Appl. No / <u>09/778687 patent 7537586</u>
7 days.  FOR IFW FI  Please reviethe IFW app	ILES: hould 10	certificate of correction within  White the approved within a substitution of the cocin document (s) in matter should be introduced, nor should the scope or
	plete the response (see nent code COCX.	below) and forward the completed response to scanning
FOR PAPE	R FILES:	
	· · · · · · · · · · · · · · · · · · ·	es/corrections as shown in the attached certificate of rm (see below) and forward it with the file to:
Rand	ficates of Correction B Iolph Square – 9D10-A Location 7580	
		Magdalene Talley
		Certificates of Correction Branch
		571-272-0423
Thank You	For Your Assistance	
•	t for issuing the above n on the appropriate box.	e-identified correction(s) is hereby:
¥	Approved	All changes apply.
ロ	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments	:	
·		/Tatyana Zalukaeva/ SPE AU 3761

SPE RESPONSE FOR CERTIFICATE OF CORRECTION



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MEHRMAN LAW OFFICE, P.C. P.O. BOX 420797 ATLANTA GA 30342 MAILED
MAY 2 7 2011
OFFICE OF PETITIONS

In re Patent No.: RE 38598

Issue Date: 21 September, 2004

Application No. 09/779,177

Filed: 8 February, 2001

Attorney Docket No. 4T02.1-020

DECISION

This is a decision on the petition filed on 1 December, 2010, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

#### NOTE:

In view of their duty of candor to the Office to properly inquire to ascertain the accuracy of representations made before the Office (*see*: 37 C.F.R. §1.4, §10.18, MPEP §410), Petitioners always are reminded of the responsibility to review their records and submit accurate information to the Office.

It does not appear that Petitioner has provided the express schedule of fees/codes, payments made, payments due and differentials, with totals. (See: 37 C.F.R. §1.27, §1.28, MPEP §509.02, et seq.) The Office will not attempt to infer Petitioner's specific intents.

The address on the petition is other than that of the correspondence address of record. If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address and/or Revocation/Power of Attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

As of this writing, Petitioner's submission is **NOT ACCEPTED** in the absence of a specification of the fees/codes, payments made, payments due and differentials, with totals.

Petitioner's request for reconsideration of this decision <u>must</u> be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR §1.27, §1.28."

Patent No.: RE 38598

Application No. 09/779,177

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that that those registered to practice <u>and</u> all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>1</sup>

#### **CONCLUSION**

The instant petition under 37 C.F.R. §1.27, §1.28 is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

<sup>&</sup>lt;sup>1</sup> <u>See</u> supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. <u>See Changes to Patent Practice and Procedure</u>, 62 <u>Fed. Reg.</u> at 53160 and 53178, 1203 <u>Off. Gaz. Pat. Office</u> at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Patent No.: RE 38598

Application No. 09/779,177

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>2</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

CC: JAMES E. SCHUTZ TROUTMAN SANDERS LLP BANK OF AMERICA PLAZA 600 PEACHTREE STREET NE/STE. 5200 ATLANT, GA 30308-2216

<sup>&</sup>lt;sup>2</sup> The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7144740

Issue Date:

December 5,2006

Application No. 09779377

Filed:

February 8,2001

Attorney Docket No. 14890.00004

January 14,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 14,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION IC	ACCEPT UNIN		ATENT (37 CFF	R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7144740	2006-12-05	09779377	2001-02-08	132850-4
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
l	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
7 ½ year	(1552)		7 ½ year	(2552)
11 ½ year			11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	i)(4) that I am		
An attorney	or agent registered to	oractice before the	Patent and Tradema	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on	
The assigne	ee of record of the entir	e interest		

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/Christopher A. Mitchell/	Date (YYYY-MM-DD)	2011-01-14				
Name	Name Christopher A. Mitchell Registration Number 40729						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

# United States Patent and Trademark Office

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DOUGHERTY & TROXELL SUITE 1404 5205 LEESBURG PIKE FALLS CHURCH VA 22041

MAILED SEP 15:2011

OFFICE OF PETITIONS

In re Patent of

Tareq Nasser Albuaijan :

Patent No.: 6,435,022

Issue Date: 08/20/2002 Application No. 09/779661

Filing or 371(c) Date: 02/09/2001 : ON PETITION

Title of Invention:

PARTIAL STROKE TESTING SYSTEM :

This is a decision on the petition under 37 CFR § 1.378(b), filed August 24, 2011, to reinstate the above-identified patent.

The petitions are **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

#### **Background**

The patent issued August 20, 2002. Patentee could have paid the three and one half ( $3\frac{1}{2}$ ) year maintenance fee between August 20, 2005, and February 20, 2006, without a surcharge, or within the six (6) month grace period between February 21, 2006, and August 20, 2006. Patentee failed to do so; accordingly, the patent became expired on August 21, 2006. It is also noted that the seven and one half ( $7\frac{1}{2}$ ) year maintenance fee was not timely paid.

#### The present petition

Petitioner files the present petition and provides, <u>inter alia</u>, that on June 27, 2002 petitioner paid an issue fee and on an Issue Fee Transmittal Form sent from the U.S.P.T.O. which was addressed to Dougherty and Troxell. Petitioner moved from Dougherty and Troxell to Dennison Schultz

and Dougherty. Petitioner does not provide the date of the move from Dougherty and Troxell to Dennison Schultz and Dougherty<sup>1</sup>.

Petitioner provides further that this Office continued to send correspondence to the prior address of the Dougherty and Troxell firm, after receiving a change of address on March 14, 2001. Petitioner avers that had the Notice of Patent Expiration been reported to Dennison Schultz and Dougherty, it would have been immediately reviewed in view of standing instructions from the Kuwait Foundation for the Advancement of Sciences.

In support of the present petition, petitioner files the Declaration of Ricardo A. Young, docketing manager for Lowe, Hauptman, Berner and Ham, LLP, since September 2004. Mr. Young provides, in relevant part, that petitioner herein, attorney David Dougherty joined the firm on or about May 1, 2006. Mr. Young provides further that he was tasked with manually entering all of attorney Dougherty's records in the firm's database, a task that took him until the end of 2006. However, the record for the present patent was not transferred to the firm during the transition period, and was not transferred to the firm's custody until sometime during the year 2007 or later and was shipped with additional abandoned cases and miscellaneous communications from Mr. Dougherty's previous firm. At that time, Mr. Young notes, the patent had already expired for failure to pay the first maintenance fee. Young Declaration at p.2.

In further support of the present petition, petitioner files the Declaration of Daphne A. Ward (Ward Declaration). Ms. Ward provides, in relevant part, that during the period from May 2002 and for several months thereafter, she worked part-time for Mr. Dougherty. Ms. Ward notes that Eric Taylor was the docket manager, and Doreen Tillman was the full-time secretary to Mr. Dougherty. Based on Ms. Ward's memory, she provides that all files that she was responsible for were properly docketed and entered into the electronic docketing system. Ms. Ward does not state whether she was responsible for docketing and entering into the electronic database the present patent. Ms. Ward also believes that all of Mr. Dougherty's files at Dougherty and Troxell were moved to Dennison Schultz and Dougherty. Ms. Ward provides further that for a period of several months following Mr. Dougherty's move from Dennison Schultz and Dougherty and MacDonald firm to the Lowe Hauptman Ham & Berner, LLP, she entered docketing information from Mr. Dougherty's files into the electronic docketing system of Lowe Hauptman Ham & Berner, LLP were properly docketed into the Lowe Hauptman Ham & Berner, LLP were properly docketed into the Lowe Hauptman Ham & Berner, LLP docket.

#### Applicable Law, Rules and MPEP

35 U.S.C. § 41(c)(1) states:

The Commissioner may accept the payment of any maintenance fee required subsection (b) of this section which is made within twenty-four months after the six-month grace period if this delay is shown to the satisfaction of the Commissioner to have been unintentional, or at any time

<sup>&</sup>lt;sup>1</sup> Regarding the chronology, Petitioner does provide that "[a]t the Dougherty and Troxell firm, the Dennison Schultz and Dougherty firm, Dennison Schultz Dougherty and MacDonald firm and subsequently at the Lowe Hauptman Ham and Berner, LLP firm, [Petitioner] maintained [his] files separately from firm files to the extent that all of [his] files were together...."

after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable.

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

- (A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);
- (B) the surcharge set forth in 37 CFR 1.20(i)(1); and
- (C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement. (Emphasis supplied).

As language in 35 U.S.C. § 41(c)(1) is identical to that in 35 U.S.C. § 133 (i.e., "unavoidable" delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. See Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff 'd sub nom. Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff 'd, 937 F.2d 623 (Fed. Cir. 1991) (table), cert. denied, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the "unavoidable" delay standard.

As 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. Id. Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See Patent No. 4,409,763, supra. See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August

31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

An error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees.

A showing of unavoidable delay will (in addition to the above) require: (1) evidence concerning the procedures in place that should have avoided the error resulting in the delay; (2) evidence concerning the training and experience of the persons responsible for the error; and (3) copies of any applicable docketing records to show that the error was in fact the cause of the delay. See MPEP § 711.03(c)(III)(C)(2).

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care. See In re Egbers, 6 USPQ2d 1869, 1872 (Comm'r Pat. 1988), rev'd on other grounds sub nom., Theodor Groz & Sohne & Ernst Bechert Nadelfabrik KG v. Quigg, 10 USPQ2d 1787 (D.D.C. 1988); In re Katrapat, 6 USPQ2d 1863, 1867-68 (Comm'r Pat. 1988).

#### **Opinion**

As provided in the patent statute and rules, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. <u>Id</u>.

Patentee is advised that under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid

Patent No.: 6, 435, 022 Page 5

to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.

Here, Petitioner provides that had the Notice of Patent Expiration been reported to Dennison Schultz and Dougherty, it would have been immediately reviewed in view of standing instructions from the Kuwait Foundation for the Advancement of Sciences. However, Petitioner does not provide any steps taken to ensure timely payment of the maintenance fee. (Emphasis supplied). As stated supra, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent, and where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b). Petitioner was responsible for payment of the 3½ year maintenance fee; however, Petitioner has not provided any showing as to any steps taken to ensure timely payment of the maintenance fee. Instead, Petitioner relied upon this Office to send maintenance fee reminders and/or Notice of Expiration. As stated supra, the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office,

Moreover, Petitioner has not provided any statement as to the cause of the delay, or any statements from any persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Petitioner has filed several Declarations (Young and Ward Declaration's); however, the Declarant's aver no knowledge of the cause of the delay in paying the maintenance fee, and instead aver no knowledge of any irregularities in docketing of maintenance fees. Moreover, Mr. Young provides that the present patent was not transferred to the firm's custody until sometime during the year 2007 or later and at that time the patent had already expired for failure to pay the first maintenance fee

#### Conclusion

The evidence has been considered; however, Petitioner has failed to demonstrate that the failure to timely pay the maintenance fee was unavoidable.

#### Petitioner's current options

#### I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision. The petition for reconsideration should be entitled "Petition for Reconsideration under 37 CFR 1.378(b)." Any petition for reconsideration of this decision must be accompanied by a non-refundable petition fee of \$400 as set forth in 37 CFR 1.17(h).

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for

reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must <u>prove</u> that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to 'show' that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

#### II. Petitioner may request a refund of the maintenance fee which accompanied the petition.

Petitioner may request a refund of the maintenance fee by writing to the Office of Finance, Refund Section, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Finally, a review of the petition reveals that the address appearing on the petition differs from the correspondence address of record. Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS

**Director for Patents** 

PO Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this Decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN	TENTIONALI EXPIRED P			AYMENT OF MAINTENANCE FEE IN AN (1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Dat (YYYY-M		Docket Number (if applicable)
6,358,962	2002-03-19	09/779,809	2001-02-0	8	379887
of the actual U.S. a 1.366(c) and (d).					ntify: (1) the patent number and (2) the application number (s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY	ims, or has previously	claimed, small en	tity status. Se	ee 37 CF	R 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR	1.27(g)	
NOT Small Entity			Small Entit	ty	
Fee 3 ½ year	Code (1551)			Fee ∕₂ year	Code (2551)
7 ½ year	(1552)		• 71	∕₂ year	(2552)
11 ½ year	(1553)		0 11	½ year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be	paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(ç aintenance fee must b	* *	his petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN	PAYMENT O	F THE M	AINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	EQUEST THAT THE	DELAYED PAYM	ENT OF THE	MAINTE	NANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNA	TORY OR SIG	GNATOR	NES
	tates: "Any petition un fice, or by the patentee				torney or agent registered to practice before the Patent t."
I certify, in accorda	ance with 37 CFR 1.4(	d)(4) that I am			
An attorney	or agent registered to	practice before the	e Patent and	Tradema	rk Office
A sole pater	ntee				
A joint pater	ntee; I certify that I am	authorized to sign	this submiss	ion on be	ehalf of all the other patentees.
A joint pater	ntee; all of whom are s	gning this e-petiti	on		
The assigne	e of record of the entir	e interest			

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	The Assignee of record of the entire interest					
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b).  Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest						
Signature	gnature /Fatih M. Uckun/ Date (YYYY-MM-DD) 2011-09-19					
Name	Fatih M. Uckun					
Enter Reel and Frame Number Remove						
Reel Number	1022773   Frame Number 10393					
Click ADD for additional Reel Number and Frame Number Add						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6358962

Issue Date:

March 19,2002

Application No. 09779809

February 8,2001

Filed:

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Attorney Docket No. 12152.54USC1

September 22,2011 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 22,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Patent No. : 6,990,060 B2 Ser. No. : 09/780,348

Inventor(s) : Thomas C. Butash Issued : January 24, 2006

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing <u>incorrect or erroneous</u> assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

Page 2, of the title page, item 56, under Other Publications the word, purported to be in 1st column line 13<sup>th</sup> cannot be found in the printed patent.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1.17(i) (currently \$130);
- B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- <u>C.</u> a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450 به المحقق ال المحقق المحق

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 40l Dulany Street Alexandria, VA 22314

By fax:

(703) 872-9306

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3422 or 703-756-1580

Bae Systems Information & Electronic Systems Integration Inc. P.O. Box 868, NHQ1-719
Nashua, NH 03061-0868

ej

ι	Inder the Paperwork Reducti	on Act of 1995, no pers	sons are required to re	espond to a collection of information unless it displays valid OMB control number.	
PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-D	DD) Docket Number (if applicable)	
7085308	2006-08-01	09780470	2001-02-12	P-3053-US	
of the actual U.S. a 1.366(c) and (d).				y identify: (1) the patent number and (2) the application number e fee(s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	tity status. See 3	87 CFR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27	(g)	
NOT Small Entity			Small Entity		
Fee  3 ½ year	Code (1551)		Fee 3 ½ ye	Code ear (2551)	
7 ½ year	(1552)		7 ½ ye	ear (2552)	
11 ½ year	, ,		11 ½ y	year (2553)	
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid	d as a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		his petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF TH	HE MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) REINSTATED	REQUEST THAT THE	DELAYED PAYME	ENT OF THE MA	INTENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	FORY OR SIGNA	ATORIES	
	37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."				
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am			
An attorney	or agent registered to	practice before the	e Patent and Trac	demark Office	
A sole pater	ntee				
A joint pater	ntee; I certify that I am	authorized to sign	this submission of	on behalf of all the other patentees.	
A joint pater	A joint patentee; all of whom are signing this e-petition				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-10-13			
Name	Kendal M. Sheets	Registration Number	47077			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

7085308

Issue Date:

August 1,2006

Application No. 09780470

Filed:

February 12,2001

Attorney Docket No. P-3053-US

October 14,2010

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the

3.5

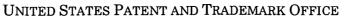
year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

October 14,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

	SPE RESPON	SE FOR CERTIFICATE OF CORRECTION
DATE	August 1. 2011	
TO SPE OF	: ART UNIT	
SUBJECT	: Request for Certificate of C	Correction for Appl. No.: <u>09780981</u> Patent No.: <u>6528759</u>
		CofC mailroom date: May 16,
Please resp	pond to this request for a	a certificate of correction within 7 days.
FOR IFW F	ILES:	
the IFW ap		ges/corrections as shown in the <b>COCIN</b> document(s) in w matter should be introduced, nor should the scope or
	nplete the response (see ment code COCX.	e below) and forward the completed response to scanning
FOR PAPE	R FILES:	
	•	ges/corrections as shown in the attached certificate of orm (see below) and forward it with the file to:
	dolph Square – 9D10-A n Location 7580	
		Certificates of Correction Branch
		703-756-1814
Thank You	For Your Assistance	
	st for issuing the above on on the appropriate box.	e-identified correction(s) is hereby:
· C	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	• •	opecity below which changes do not apply.
	Denied	State the reasons for denial below.
	Denied	State the reasons for denial below.
<u>(</u>	Denied	State the reasons for denial below.
<u>(</u>	Denied	State the reasons for denial below.
<u>(</u>	Denied	State the reasons for denial below.
<u>(</u>	Denied	State the reasons for denial below.





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MAXIM/BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE CA 94085-4040

MAILED
APR 1 1/2011
OFFICE OF PETITIONS

In re Patent No. RE38140 Issue Date: June 10, 2003

Application No. 09/781,120 Filed: February 8, 2001

Attorney Docket No. 055123.P086R

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed March 4, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on February 9, 2011, for failure to pay the eleven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The patent file is being forwarded to Files Repository.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KENNETH S. WATKINS, JR. 372 RIVER DRIVE DAHLONEGA GA 30533

> MAILED DEC 15 2011

In re Patent No. 6,580,506 :

OFFICE OF PETITIONS

Issue Date: June 17, 2003 Application No. 09/781,138

**DECISION ON PETITION** 

Filed: February 10, 2001

Attorney Docket No. LT-01

This is a decision on the petition under 37 CFR 1.378(c), filed October 28, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 17, 2011 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

The patent file is being forwarded to Files Repository.

/Michelle R. Eason/ Michelle R. Eason Paralegal Specialist Office of Petitions

cc: SHLESINGER, ARKWRIGHT & GARVEY LLP 5845 Richmond Highway, Suite 415 ALEXANDRIA, VA 22303



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MCCARTER & ENGLISH, LLP NEWARK FOUR GATEWAY CENTER 100 MULBERRY STREET NEWARK, NJ 07102

MAILED OCT 0 1 2010

**OPFICE OF PETITIONS** 

In re Patent No. 7,702,555

Issue Date: April 20, 2010

Application No. 09/781,310

Filed: February 12, 2001

Attorney Docket No. 97171-00112-2

**NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

Alicia Kelley

Petitions Examiner

Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
6499860	2002-12-31	09781485	2001-02-12	N 017094US_A		
of the actual U.S. a 1.366(c) and (d).				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR		
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small en	tity status. See 37 C	FR 1.27.		
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	NTITY STATUS all entity status.	See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)		
● 7 ½ year	(1552)		○ 7½ year	(2552)		
11 ½ year	r (1553)		○ 11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid a	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYM	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNA	TORY OR SIGNATO	RIES		
	states: "Any petition und fice, or by the patented			attorney or agent registered to practice before the Patent st."		
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am				
An attorney	or agent registered to	practice before the	e Patent and Tradem	ark Office		
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this submission on I	pehalf of all the other patentees.		
A joint patentee; all of whom are signing this e-petition						
The assigne	The assignee of record of the entire interest					

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Daniel J. Piotrowski/	Date (YYYY-MM-DD)	2011-02-03		
Name	Daniel J. Piotrowski	Registration Number	42079		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6499860

Issue Date:

December 31,2002

Application No. 09781485

Filed:

February 12,2001

Attorney Docket No. PHN 17,094A

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

February 3,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 3,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		.Y DELAYED P ATENT (37 CFF	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))		
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
7100594	2006-09-05	09781530	2001-02-08	5644.05		
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY						
	ims, or has previously		ity status. See 37 CF	FR 1.27.		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)		
7 ½ year	(1552)		7 ½ year	(2552)		
11 ½ year	(1553)		11 ½ year	(2553)		
SURCHARGE The surcharge requoting of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must be	* *	nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES		
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."		
I certify, in accordance with 37 CFR 1.4(d)(4) that I am						
$\circ$	or agent registered to p	oractice before the	Patent and Tradema	ark Office		
A sole pater						
O A joint pater	itee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are si	gning this e-petitic	on			
The assigne	e of record of the entir	e interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/marc d foodman/	Date (YYYY-MM-DD)	2011-10-27					
Name	Marc D. Foodman	Registration Number	34110					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

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- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7100594

Issue Date:

September 5,2006

Application No. 09781530

Filed:

February 8,2001

This is a decision on the electronic petition, filed

Attorney Docket No. SPORT-001

October 28,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

The petition is **GRANTED**.

October 28,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Paper No.

LAW OFFICES OF JAMES E. WALTON, PLLC 1169 N. BURLESON BLVD. **SUITE 107-328 BURLESON TX 76028** 

MAILED

MAR 17 2011

OFFICE OF PETITIONS

In re Patent No. 7,249,087

Issue Date: 07/24/2007

Application Number: 09/781,604

Filing or 371(c) Date: 02/12/2001

**NOTICE** 

Attorney Docket Number: 1272JW-61295

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on February 1, 2011.

The Office no longer investigates or rejects original or reissue patents under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

Douglas Wood Attorney

Office of Petitions

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
6,907,317	2005-06-14	09/781,686	2001-02-12	007448-0303839		
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY  Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.						
LOSS OF ENTITL	EMENT TO SMALL EN	ITITY STATUS				
NOT Small Entity			Small Entity			
Fee	Code		Fee	Code		
● 3½ year	(1551)		3 ½ year	(2551) (2552)		
7 ½ year	(1552)		7 ½ year 11 ½ year	(2553)		
	(1553)		11 /2 year	(2333)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	REQUEST THAT THE D	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES		
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."		
I certify, in accordance with 37 CFR 1.4(d)(4) that I am						
<ul><li>An attorney</li></ul>	or agent registered to p	oractice before the	Patent and Tradem	ark Office		
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are si	gning this e-petitio	on			
○ The assigne	ee of record of the entir	e interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/Emily T. Bell/	Date (YYYY-MM-DD)	2011-02-28					
Name	Emily T. Bell	Registration Number	47418					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
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- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6907317

Issue Date:

June 14,2005

Application No. 09781686

Filed:

February 12,2001

:UNDER 37 CFR 1.378(c)

:DECISION GRANTING PETITION

Attorney Docket No. 98,593-E

February 28,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

February 28,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing D	Date -MM-DD)	Docket Number (if applicable)		
6,412,155	2002-07-02	09/781,999	2001-02	2-14	1008.39599x00		
of the actual U.S. a 1.366(c) and (d).					ntify: (1) the patent number and (2) the application number (s) is/are associated with the correct patent. 37 CFR		
SMALL ENTITY Patentee cla	ims, or has previously	claimed, small ent	ity status.	See 37 CF	FR 1.27.		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CF	R 1.27(g)			
NOT Small Entity			Small E	ntity			
Fee 3 ½ year	Code (1551)		0	Fee 3 ½ year	Code (2551)		
<ul><li></li></ul>	(1552)		0	7 ½ year	(2552)		
○ 11 ½ year	(1553)		0	11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		()(2) (Fee Code 15	558) must	be paid as	a condition of accepting unintentionally delayed payment		
The appropriate m	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition	l.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT	OF THE M	IAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	NT OF TH	HE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES							
	tates: "Any petition und fice, or by the patentee				ttorney or agent registered to practice before the Patent t."		
I certify, in accorda	ance with 37 CFR 1.4(c	i)(4) that I am					
<ul><li>An attorney</li></ul>	or agent registered to	oractice before the	Patent ar	nd Tradema	ark Office		
A sole pater	ntee						
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	ee of record of the entir	e interest					

32087

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Registration Number

	Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.							
	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/Alan E. Schiavelli/	Date (YYYY-MM-DD)	2010-12-02					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

Name

Alan E. Schiavelli

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6412155 Issue Date:

July 2,2002

Application No. 09781999

Filed:

February 14,2001

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Attorney Docket No. 1008.39599X00

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5

December 2,2010

,under 37 CFR 1.378(c)

year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

December 2,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NOVAK DRUCE DELUCA + QUIGG LLP 300 NEW JERSEY AVENUE NW FIFTH FLOOR WASHINGTON DC 20001

MAILED
SEP 2 3 2010
OFFICE OF PETITIONS

In re Application of Burst et al.

Application No. 09/782,305

Filing Date: February 14, 2001

Attorney Docket No. 51193

Decision on Petition

This is a decision on the petition under 37 CFR 1.181 filed April 23, 2010, requesting the Office withdraw the holding of abandonment. This is also a decision in response to the petition under 37 CFR 1.53(e) filed April 23, 2010, requesting the application be accorded a filing date of February 14, 2001.<sup>1</sup>

The petition under 37 CFR 1.181 is granted.

The petition under 37 CFR 1.53(e) is granted.

#### The Petition Under 37 CFR 1.181

Application papers were filed February 14, 2001, by the Law Offices of Keil & Weinkauf ("Keil & Weinkauf"). The specification filed February 14, 2001, included references to drawing Figures 1-3.

The application papers matched with the file did not include any drawings.

On June 21, 2002, the Office of Patent Application Processing mailed a notice stating drawings had not been filed, the application had not been accorded a filing date, and the filing date for the application would be the date of receipt of the drawings. The notice stated a response to the notice must be filed within two months of the mailing date of the notice or proceedings on the application would be terminated.

A reply to the June 21, 2002 notice was not matched with the file and the Office mailed a Notice of Abandonment on June 2, 2004.

<sup>&</sup>lt;sup>1</sup> Error! Main Document Only. The original "Petition to Accord Filing Date" cannot be located in the application file. Therefore, this decision is based on the copy of the petition supplied on April 23, 2010.



The petition under 37 CFR 1.181 states,

[A] hand written statement on a Post-It note believed in the hand of Mary Lu Chadwick, a member of the clerical staff at Keil & Weinkauf in 2004 states that "[t]his is a mistake we have already filed a Petition 7-10-02 no response from PTO." No due date was entered into the Keil & Weinkauf docket in connection with the Notice [Attachement I] and no further action was taken at this juncture.

The application file was transferred from Keil & Weinkauf to the Law Offices of Novak, Druce + Quigg, LLP ("Novak Druce") during February 2005.

On February 11, 2010, foreign counsel for applicants contacted Novak Druce in order to inquire into the status of the July 15, 2002 petition.

The instant petition to withdraw the holding of abandonment was filed April 23, 2010. The petition asserts a reply to the June 21, 2002 notice, in the form of a "Petition to Accord Filing Date," was timely filed July 15, 2002.

Although proceedings for an application which has *not* been accorded a filing date can be terminated, an application which has not been accorded a filing date cannot become abandoned. Therefore, the issue to be addressed by the Office is whether or not the Office properly terminated proceedings for the application.

A review of the USPTO file for this application indicates the file does not include a copy of the July 15, 2002 petition. However, the petition under 37 CFR 1.181 includes a postcard receipt acknowledging the Office received a "Petition to Accord Filing Date" on July 15, 2002. Therefore, the Office is persuaded the petition was filed July 15, 2002, and later misplaced by the Office.

In view of the preceding discussion, the Notice of Abandonment is withdrawn and proceedings for the application are hereby reopened.

#### The Petition Under 37 CFR 1.53(e)

The "Petition to Accord Filing Date" asserts three sheets of drawings were part of the original application papers.

A review of the USPTO file for this application indicates the file does not include a copy of any drawings filed February 14, 2001. However, the petition includes a postcard receipt

<sup>&</sup>lt;sup>2</sup> Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

acknowledging the Office received "3 sheets of drawings" on February 14, 2001. Therefore, the Office is persuaded three sheets of drawings were filed July 15, 2002, and later misplaced by the Office.

In view of the preceding discussion, the application will be accorded a filing date of February 14, 2001.

The Office has not charged a petition fee for the petition under 37 CFR 1.53(e) to the deposit account identified in the petition since the petition has established drawings were filed February 14, 2001.

## Conclusion

Proceedings for the application are reopened.

The Office of Patent Examination will be informed of the instant decision and will process the application with a filing date of February 14, 2001, using the application papers filed February 14, 2001, and the copy of the drawings filed April 23, 2010.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Paper No.

STEVEN L. HIGHLANDER FULBRIGHT & JAWORSKI L.L.P. SUITE 2400 600 CONGRESS AVENUE AUSTIN TX 78701

MAILED
SEP 1 0 2010
OFFICE OF PETITIONS

In re Patent No. 7629308

Williams al.

Issue Date: 12/08/2009 Application No. 09/782,953

Filed: 02/13/2001

Atty Docket No. UTSD: 674US/SLH

: DECISION ON REQUEST

FOR

RECONSIDERATION OF

PATENT TERM ADJUSTMENT

and

: NOTICE OF INTENT TO ISSUE : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 19, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by two thousand forty-six (2046) days. For the reasons stated below, the petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by one thousand one hundred thirty-one (1131) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred thirty-one (1131) days is **GRANTED to the extent indicated herein**.

As to the "B" delay, the period is the period beginning on February 14, 2004, the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) and ending on December 8, 2009, the date the

application issued as a patent, or 2125 days. <u>See</u>, 35 U.S.C. 154(b)(1)(C)(iii). Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On February 24, 2004, a notice of appeal was filed. On August 26, 2004, 185 days after the date the notice of appeal was filed, a non-final Office action was mailed. On July 22, 2005, a notice of appeal was filed. On December 4, 2006, 501 days after the notice of appeal was filed, a non-final Office action was mailed. On December 6, 2007, a notice of appeal was filed. On July 21, 2008, 229 days after the notice of appeal was filed, a notice of allowance was mailed. Accordingly, the excluded period for appellate review is 915 (185 + 501 + 229) days, and the "B" delay period is 1210 (2125 - 915) days.

The patent term adjustment at the time of issuance of the patent is 1131 (172 days of Office delay + 1210 days of over three years delay - 251 days of applicant delay) days.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

No additional fees are required. The \$200.00 fee submitted with the petition will be refunded to counsel's credit card.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand one hundred thirty-one (1131) days.

Patent No. 7,629,308

Application No. 09/782,953 Page 3

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood

Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

**PATENT** 

7,629,308 B2

DATED

Dec. 8, 2009

**DRAFT** 

INVENTOR(S): Williams et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [\*] Notice: under 35 USC 154(b) by 1874 days.

Delete the phrase "by 1874 days" and insert – by 1131 days--



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6648912

Issue Date:

November 18,2003

Application No. 09783205

Filed:

February 15,2001

Attorney Docket No. 23660-00624

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

January 18,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 18,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PETITION TO	ACCEPT UNIN		LY DELAYED F ATENT (37 CF	PAYMENT OF MAINTENANCE FEE IN AN R 1.378(c))			
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6648912	2003-11-18	09783205	2001-02-15				
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY  Repart Temperature (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
	EMENT TO SMALL EN		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee → 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
O 11 ½ year	r (1553)		11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid a	s a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
	states: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."			
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
$\circ$	or agent registered to	oractice before the	e Patent and Traden	nark Office			
A sole pater			<b></b>	and the second s			
O				pehalf of all the other patentees.			
O A joint pater	ntee; all of whom are si	gning this e-petition	on				
The assigne	ee of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/John N Coulby/	Date (YYYY-MM-DD)	2012-01-18					
Name	John N. Coulby	Registration Number	43565					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

BECTON, DICKINSON AND COMPANY 1 BECKON DRIVE, MC 110 FRANKLIN LAKES, NJ 07417-18 8 0

MAILED

OCT 13 2011

OFFICE OF PETITIONS

In re Patent No. 6,692,700

Issued: February 17, 2004

Application No. 09/783,225

Filed: February 14, 2001

Attorney Docket No: P-9092

**ON PETITION** 

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed September 14, 2011 under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. <u>See DH Technology v. Synergystex International</u>, Inc.. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff

at (571) 272-3282.

Patricia Faison-Ball

Senior Petitions Attorney

Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		.Y DELAYED P ATENT (37 CFI	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))			
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6,399,311	2002-06-04	09/783,836	2001-02-14	209596.5005			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
SMALL ENTITY	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.			
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS all entity status. S	See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
○ 7½ year	(1552)		● 7½ year	(2552)			
◯ 11 ½ year	(1553)		○ 11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) REINSTATED	EQUEST THAT THE [	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."			
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
An attorney	or agent registered to p	oractice before the	Patent and Tradem	ark Office			
A sole pater	ntee						
A joint pater	tee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	e of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/Alan S. Nadel/	Date (YYYY-MM-DD)	2010-10-18					
Name	Alan S. Nadel	Registration Number	27363					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

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- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
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- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6399311

Issue Date:

June 4,2002

Application No. 09783836

Filed:

February 14,2001

Attorney Docket No. 9596.92U1 (K1757)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

October 18,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

October 18,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

PANITCH SCHWARZE BELISARIO & NADEL LLP ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA PA 19103 Paper No. 12

MAILED

AUG 3 1 2010

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,399,311

Issue Date: June 4, 2002 Application No. 09/783,836

Filed: February 14, 2001

Attorney Docket No. 9596.92U1 (K1757)

This is a decision on the petition under 37 CFR 1.378(c), filed August 4, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) above.

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

- (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
  - (3) An assignee as provided for under §3.71(b) of this chapter; or
  - (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Kathryn A. Donohue) was ever given a power of attorney to act on behalf of inventors Peter F. Davies and Denise C. Polacek, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay. If petitioner is signing on behalf of the assignee, compliance with 37 CFR 3.73(b) must satisfy the provisions of 37 CFR 3.73(b).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450



By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-4584.

Joanne Burke
Petitions Examiner
Office of Petitions

CC:

Kathryn A. Donohue

3160 Chestnut Street, Suite 200

Philadelphia, PA 19104



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

PANITCH SCHWARZE BELISARIO & NADEL LLP ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA PA 19103

MAILED JAN 3 0 2012

OFFICE OF PETITIONS

In re Patent No. 6,399,311

Issue Date: June 4, 2002

Application No. 09/783,836

Filed: February 14, 2001

Attorney Docket No. 9596.92U1 (K1757)

LETTER

This letter is the result of a sua sponte review of the October 18, 2010 electronically filed petition under 37 CFR 1.378(c) to accept the delayed payment of a maintenance fee in the above-identified application.

A review of USPTO records reveals that the "Petition To Accept Unintentionally Delayed Payment Of Maintenance Fee In An Expired Patent (37 CFR 1.378(c)" and the accompanying "Electronic Patent Application Fee Transmittal" submission filed October 18, 2010 were accepted. However, the \$400.00 reconsideration fee (as set forth in 37 CFR 1.17(f)) has **not** been submitted as required in the petition decision mailed August 31, 2010. Therefore, a total of \$400.00 is being deducted from the remaining balance of the \$2,130.00 submitted on August 3, 2010, leaving a balance of \$1,730 to be refunded by check, as it is the method in which the fee was paid.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

Cc:

KATHRYN A. DONOHUE 3160 CHESTNUT STREET, SUITE 200 PHILADELPHIA, PA 19104

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN								
EXPIRED PATENT (37 CFR 1.378(c))								
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)				
6472809	2002-10-29	09784004	2001-02-16					
CAUTION: Mainte of the actual U.S. a 1.366(c) and (d).	CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
SMALL ENTITY Patentee clai	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.				
	EMENT TO SMALL EN to longer entitled to sm		See 37 CFR 1.27(g)					
NOT Small Entity			Small Entity					
Fee → 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)				
7 ½ year	(1552)		7 ½ year	(2552)				
11 ½ year	(1553)		11 ½ year	(2553)				
SURCHARGE The surcharge requoting of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment				
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.					
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS				
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	NT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT				
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES				
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."				
I certify, in accorda	unce with 37 CFR 1.4(c	l)(4) that I am						
An attorney	or agent registered to p	practice before the	Patent and Tradem	ark Office				
A sole pater	itee							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.								
A joint pater	itee; all of whom are si	gning this e-petitio	n					
The assigne	e of record of the entir	e interest						

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of form of the sig	f the applicant or representative is required in accordance with 37 CFR 1.33 agnature	nd 10.18. Please see 37 CFR	1.4(d) for the				
Signature	/Marvin Motsenbocker/	Date (YYYY-MM-DD)	2012-03-22				
Name	Marvin A. Motsenbocker	Registration Number	36614				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

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- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6472809

Issue Date:

October 29,2002

Application No. 09784004

Filed:

Attorney Docket No. 1994/00017

February 16,2001

This is a decision on the electronic petition, filed

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

March 22,2012

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 22,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PETITION TO	ACCEPT UNIN		ATENT (37 CFF	R 1.378(c))			
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6505114	2003-01-07	09784038	2001-02-16	0104-0321P			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
	ims, or has previously		ity status. See 37 Cl	FR 1.27.			
	EMENT TO SMALL EN no longer entitled to sm						
NOT Small Entity			Small Entity				
Fee	Code		Fee  3 ½ year	Code (2551)			
	(1551)		○ 7½ year	(2552)			
<ul><li> 7 ½ year</li><li> 11 ½ year</li></ul>	(1552) · (1553)		11 ½ year	(2553)			
SURCHARGE							
The surcharge requoration of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	EQUEST THAT THE [	DELAYED PAYME	NT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."			
I certify, in accorda	unce with 37 CFR 1.4(c	l)(4) that I am					
An attorney	or agent registered to p	oractice before the	Patent and Tradema	ark Office			
<ul><li>A sole pater</li></ul>	itee						
A joint pater	itee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint pater	itee; all of whom are si	gning this e-petitio	n				
The assigne	e of record of the entire	e interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Sole Patentee						
A signature of form of the sig	the applicant or representative is required in accordance with 37 CFR 1.33 and prature.	I 10.18. Please see 37 CFR	1.4(d) for the				
Signature	/sergio luciani/	Date (YYYY-MM-DD)	2011-03-21				
Name	sergio luciani						

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- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6505114

Issue Date:

January 7,2003

Application No. 09784038

Filed:

Attorney Docket No. 0104-0321P

February 16,2001

This is a decision on the electronic petition, filed

March 21,2011

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 21,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Doc Code: PET.AUTO Document Description: Petition a	automatically granted by EFS-Web	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce			
Electronic Petition Request	REQUEST FOR WITHDRAWAL AS ATTORNIC CORRESPONDENCE ADDRESS	EY OR AGENT AND CHANGE OF			
Application Number	09784045				
Filing Date	16-Feb-2001				
First Named Inventor	William Kirsh				
Art Unit	3626				
Examiner Name	ROBERT MORGAN				
Attorney Docket Number	462322000100				
Title	System and method for standardized and a	utomated appeals process			
	rney or agent for the above identified paten associated with Customer Number:	t application and			
The reason(s) for this request are	those described in 37 CFR:				
10.40(b)(4)					
Certifications					
I/We have given reasonable intend to withdraw from emp	notice to the client, prior to the expiration of the ployment	response period, that the practitioner(s)			
I/We have delivered to the cl to which the client is entitled	lient or a duly authorized representative of the cl	ient all papers and property (including funds)			
✓ I/We have notified the client	of any responses that may be due and the time f	rame within which the client must respond			
Change the correspondence addre properly made itself of record purs	ss and direct all future correspondence to the firsuant to 37 CFR 3.71:	st named inventor or assignee that has			
Name	EAPPEALS, LLC				
Address	4000 Hollywood Blvd Suite 650N				
City	Hollywood				
State	FL				
Postal Code	33021				
Country	US				
	1				

I am authorized to sign on behalf of myself and all withdrawing practitioners.				
Signature	/Jonathan Bockman/			
Name	Jonathan Bockman			
Registration Number	45640			



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Decision Date: February 10, 2012

In re Application of : DECISION ON REQUEST TO WITHDRAW AS

William Kirsh

ATTORNEY/AGENTOF RECORD

Application No: 09784045

Filed: 16-Feb-2001

Attorney Docket No: 462322000100

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 10, 2012

The request is **APPROVED.** 

The request was signed by Jonathan Bockman (registration no. 45640) on behalf of all attorneys/agents associated with Customer Number 25227 . All attorneys/agents associated with Cusotmer Number 25227 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name EAPPEALS, LLC

Name2

Address 1 4000 Hollywood Blvd

Address 2 Suite 650N City Hollywood

State FL
Postal Code 33021
Country US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

THE NATH LAW GROUP 112 SOUTH WEST STREET ALEXANDRIA VA 22314

MAILED

OFFICE OF PETITIONS

In re Hans Reichle Application No. 09/784,176 Filed: February 16, 2001 Patent No. 6,520,796

Issued: February 18, 2003

**DECISION** 

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed December 9, 2011.

The fee deficiency submission under 37 CFR 1.28 of \$680 for the 3.5 year maintenance fee, \$1,610 for the 7.5 year maintenance fee, and \$85 for the late payment surcharge is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo

Petitions Attorney Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THE NATH LAW GROUP 112 SOUTH WEST STREET ALEXANDRIA VA 22314 MAILED
JAN 12 2012
OFFICE OF PETITIONS

In re Hans Reichle Application No. 09/784,185 Filed: February 16, 2001 Patent No. 6,443,776

Issued: September 3, 2002

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed December 9, 2011.

The fee deficiency submission under 37 CFR 1.28 of \$680 for the 3.5 year maintenance fee, and \$1,610 for the 7.5 year maintenance fee is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Uf G

Cliff Congo Petitions Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

DONALD V. TOMKINS C/O PARLEE MCLAWS SUITE 1500 MANULIFE PLACE 10180 – 101 STREET EDMONTON AB T5J 4K1 CA CANADA

MAILED

SEP 23 2011

OFFICE OF PETITIONS

In re Application of

Jason Gostor et al

Application No. 09/784,293

Filed: February 14, 2001

Attorney Docket No. 116.002

**ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 5, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the nonfinal Office action mailed March 10, 2004.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$810.00; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 10/936,549, filed September 9, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THE LAW OFFICE OF HUGH R. KRESS P.L.L.C. HUGH R. KRESS 3120 SOUTHWEST FREEWAY SUITE #320 HOUSTON TX 77098

MAÎLED

DEC 15 2011

OFFICE OF PETITIONS

In re Patent No. 6,980,965

Issue Date: 12/27/2005

Application Number: 09/784,692

Filing Date: 02/15/2001

For: FLORIST REGISTRY

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed on November 9, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is GRANTED.

The patent issued on December 27, 2005. The window for payment of the first maintenance fee installment with a surcharge closed on December 27, 2009. Therefore, since this petition was filed within twenty-four (24) months of the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

<sup>&</sup>lt;sup>1</sup>37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:

<sup>(1)</sup> The required maintenance fee set forth in § 1.20(e) through (g);

<sup>(2)</sup> The surcharge set forth in § 1.20(I)(2); and

<sup>(3)</sup> A statement that the delay in payment of the maintenance fee was unintentional.

The address listed on the petition is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this patent will be mailed solely to the address of record. A change of correspondence address should be filed if the correspondence address needs to be updated.

The file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood Senior Petitions Attorney Office of Petitions

cc: Zackery Alolabi 710 Briar Hill Houston TX 77042

Encl: PTO/SB/123 Change of Correspondence Address--Patent



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.usplo.gov

Harness, Dickey and Pierce Suite 400 7700 Bonhomme St. Louis, MO 63105

MAILED

JUL 21 2011

OFFICE OF PETITIONS

In re Patent No. 6,659,114

Issue Date: December 9, 2003

Application No. 09/784,750

Filed: February 15, 2001

Patentee(s): James W. Bigott

NOTICE

This is a Notice regarding your "CHANGE OF ENTITY STATUS: NOTIFICATION OF LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS," filed on June 29, 2011, which is being treated as a request under 37 CFR 1.28(c), requesting acceptance of a fee deficiency submission under 37 CFR 1.28(c).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby <u>ACCEPTED</u>. Therefore, status as a small entity has been removed and any future fee(s) submitted must be paid at the large entity rate.

Additionally, the request is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Brian G. Panka appearing on the request shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts.

Inquiries related to this communication should be directed to the undersigned at (571) 272-

Andrea Smith

Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6511216	2003-01-28	09784896	2001-02-15	
of the actual U.S. 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	aims, or has previously	claimed, small er	itity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EI		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
<ul><li>3 ½ year</li><li>7 ½ year</li></ul>			● 7½ year	(2552)
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of form of the sig	f the applicant or representative is required in accordance with 37 CFR 1.33 a gnature	nd 10.18. Please see 37 CFR	1.4(d) for the				
Signature	/Lawrence A. Aaronson/	Date (YYYY-MM-DD)	2011-04-13				
Name	Lawrence A. Aaronson	Registration Number	38369				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

#### **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6511216

Issue Date:

January 28,2003

Application No. 09784896

Filed:

February 15,2001

Attorney Docket No. 28130-1

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

April 13,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

April 13,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN	TENTIONALL EXPIRED PA			AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))		
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing		Docket Number (if applicable)		
6,516,732	2003-02-11	09/785,075	2001-0	)2-16	087276.00001		
	ims, or has previously	claimed, small ent	ity status	s. See 37 Cl	FR 1.27.		
LOSS OF ENTITL	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS all entity status. S	See 37 C	FR 1.27(g)			
NOT Small Entity			Small	Entity			
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	tates: "Any petition und fice, or by the patentee				ttorney or agent registered to practice before the Patent it."		
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am					
An attorney	or agent registered to	oractice before the	Patent a	and Tradema	ark Office		
A sole pater	ntee						
A joint pater	ntee; I certify that I am	authorized to sign	this subr	mission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are si	gning this e-petitio	n				
The assigne	ee of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of form of the sig	f the applicant or representative is required in accordance with 37 CFR 1.33 agnature	nd 10.18. Please see 37 CFR	R 1.4(d) for the				
Signature	/Richard E. Lyon, Jr./	Date (YYYY-MM-DD)	2011-06-03				
Name	Richard E. Lyon, Jr.	Registration Number	26300				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

#### **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6516732

Issue Date:

February 11,2003

Application No. 09785075

Filed:

February 16,2001

Attorney Docket No. 261/205

June 3,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

June 3,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

Zilka-Kotab, PC P.O. Box 721120 San Jose, CA 95172-1120 MAILED

APR 18 2011

OFFICE OF PETITIONS

In re Application of

Matthew Thomas Hart

Application No. 09/785,240

Filed: February 20, 2001

Attorney Docket No. NAI1P445-00.174.01

**DECISION ON PETITION** 

TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 24, 2011.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to Zilka-Kotab, PC has been revoked by the assignee of the patent application on February 28, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/ Terri Johnson Petitions Examiner Office of Petitions

cc: Patent Capital Group 6119 McCommas Blvd. Dallas, TX 75214

### SPE RESPONSE FOR CERTIFICATE OF CORRECTION Paper No.: DATE : 8/13/10 TO SPE OF : ART UNIT 3714 (3700) : Request for Certificate of Correction for Appl. No.: 09/785.969 Patent No.: 7,680,692 **SUBJECT** Please respond to this request for a certificate of correction within 7 days. **FOR IFW FILES:** Please review the requested changes/corrections as shown in the COCIN document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed. Please complete the response (see below) and forward the completed response to scanning using document code COCX. FOR PAPER FILES: Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to: Certificates of Correction Branch (CofC) Randolph Square - 9D10-A Palm Location 7580 Ernest C. White. 198 Randolph Sq. Ste 9D62A 703-756-1590 Thank You For Your Assistance The request for issuing the above-identified correction(s) is hereby: Note your decision on the appropriate box. Approved All changes apply. ☐ Approved in Part Specify below which changes do not apply.

State the reasons for denial below.

ART UNIT 3714
U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Denied



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH VA 22040-0747

# MAILED SEP 0 8 2011 OFFICE OF PETITIONS

In re Patent No. 7,613,342 : DECISION ON REQUEST

Bober : FOR

Issue Date: November 3, 2009 : RECONSIDERATION OF

Application No. 09/786,352 : PATENT TERM ADJUSTMENT

Filed: March 13, 2001 : and

Atty Docket No. 1906-0120PUS1 : NOTICE OF INTENT TO ISSUE

CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 2, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and forty-two (1,242) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, one hundred and forty-four (1,144) days is **GRANTED to the extent indicated herein**.

It is noted that patentees failed to account for the filing of the notice of appeal on May 19, 2008. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 183 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, May 19, 2008, and ending on the day the non-final Office action was mailed, November 17, 2008. Thus,

the B delay is 829 days (1,0121 - 183). Accordingly, the patent term adjustment is 1,144 days (811 days of A delay + 829 days of B delay - 0 days of overlap - 496 days of applicant delay).

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Deposit account 02-2448 will be charged \$200.00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand, one hundred and forty-four (1,144) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petitions Attorney Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

<sup>&</sup>lt;sup>1</sup>The maximum "B" delay period is 1,012 days, with said period beginning, March 14, 2004, and ending December 20, 2006, the day before the date the Request for Continued Examination was filed.

#### **DRAFT COPY**

## UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

**PATENT** 

: 7,613,342 B1

DATED

: Nov. 3, 2009

INVENTOR(S): Bober

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (576) days

Delete the phrase "by 576 days" and insert – by 1,144 days--

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,909,451	2005-06-21	09/786,514	2001-03-01	46956-P002WOUS
of the actual U.S. 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	nims, or has previously	claimed, small er	ntity status. See 37 CF	FR 1.27.
	EMENT TO SMALL EN		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
3 ½ year 7 ½ year	(1551) (1552)		7 1/ year	(2552)
11 ½ year			11 ½ year	(2553)
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SURCHARGE The surcharge rec	uired by 37 CFR 1 200	i)(2) (Fee Code 1	1558) must be paid as	a condition of accepting unintentionally delayed payment
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
A signature of form of the sig	the applicant or representative is required in accordance with 37 CFR 1.33 a gnature	nd 10.18. Please see 37 CFR	1.4(d) for the				
Signature	/Matthew J. Mattson/	Date (YYYY-MM-DD)	2011-05-25				
Name	Matthew J. Mattson	Registration Number	65973				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

#### **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6909451

Issue Date:

June 21,2005

Application No. 09786514

Filed:

March 1,2001

Attorney Docket No. 47254-00004

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

May 25,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

May 25,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN		LY DELAYED P ATENT (37 CFI	AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,079,650	2006-07-18	09/786,756	2001-06-20	KNUDSEN=2
of the actual U.S. a 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
○ 7 ½ year	(1552)		○ 7½ year	(2552)
11 ½ year	(1553)			(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
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STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES
	tates: "Any petition uno fice, or by the patentee			ttorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(d	d)(4) that I am		
An attorney	or agent registered to	practice before the	Patent and Tradema	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on	
The assigne	e of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/rlb/	Date (YYYY-MM-DD)	2011-02-17
Name	Roger L. Browdy	Registration Number	25618

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

7079650

Issue Date:

July 18,2006

Application No. 09786756

Filed:

June 20,2001

This is a decision on the electronic petition, filed

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Attorney Docket No. KNUDSEN2

to accept the unintentionally delayed payment of the

February 17,2011 3.5

,under 37 CFR 1.378(c)

year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 17,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

RAMBUS INC. C/O Ann Williams 4440 EL CAMINO REAL LOS ALTOS CA 94022

MAILED

OCT 1 2 2010

OFFICE OF PETITIONS

In re Patent No. 7,054,969

Issue Date: May 30, 2006

Application No. 09/787,353

Filed: June 12, 2001

Attorney Docket No. 032658-016

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed August 27, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions

cc: Kenneth B. Leffler
Potomac Patent Group, PLLC
P.O. Box 270
Fredericksburg, VA 22404

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6,985,722	2006-01-10	09/787,759	2003-11-06	213222-00039			
of the actual U.S. a 1.366(c) and (d).				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR			
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.			
LOSS OF ENTITL  Representation Patentee is r	EMENT TO SMALL EN no longer entitled to sm	TITY STATUS all entity status. S	See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
○ 7½ year	(1552)		○ 7½ year	(2552)			
○ 11 ½ year	(1553)		11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
	tates: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."			
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am					
,	or agent registered to	oractice before the	Patent and Tradem	ark Office			
A sole pater	ntee						
A joint pater	itee; I certify that I am	authorized to sign	this submission on b	behalf of all the other patentees.			
A joint pater	A joint patentee; all of whom are signing this e-petition						
The assigne	e of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Richard P. Bauer/	Date (YYYY-MM-DD)	2011-04-08			
Name	Richard P. Bauer	Registration Number	31588			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
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- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6985722

Issue Date:

January 10,2006

Application No. 09787759

Filed:

November 6,2003

Attorney Docket No. 13222.00039

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

April 8,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

April 8,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

MORSE, BARNES-BROWN & PENDLETON, P.C.

ATTN: IP MANAGER RESERVOIR PLACE

1601 TRAPELO ROAD, SUITE 205

WALTHAM MA 02451

MAILED

In re Application of

Herweck et al.

Application No. 09/788,035

Patent No.: 6,475,244

Filed: February 16, 2001

Issued: November 5, 2002

Attorney Docket No. AMC-154-103

Title: TUNNELING DEVICE

DEC 292011

**OFFICE OF PETITIONS** 

DECISION ON PETITION

PURSUANT TO

37 C.F.R. § 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on December 13, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

:

:

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

The deficiency payment in the amount of \$1610 has been received.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is GRANTED accordingly.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Page 2

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski

Senior Attorney

Office of Petitions

<sup>1</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R.  $\S$  1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

THE HECKER LAW GROUP 1925 CENTURY PARK EAST SUITE 2300 LOS ANGELES CA 90067 MAILED

APR 1 1 2011

OFFICE OF PETITIONS

In re Application of

Samuel Gustman et al.

Patent No. 6,549,911

Application No. 09/788,310

Filed: February 16, 2001

Attorney Docket No. 84300.912CCPAC

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 February 23, 2011.

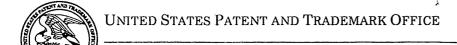
The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/ Paralegal Specialist Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Jennifer A. Albert, Esq. **Hunton & Williams** 1900 K Street NW. Suite 1200 Washington, DC 20006

MAILED OCT 15 2010 OFFICE OF PETITIONS

In re Application of Stacy R. STEUART, et al. Application No. 09/788,646 Filed: February 21, 2001

Attorney Docket No. **52493.000127** 

**DECISION GRANTING PETITION** UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 15, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on March 23, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.1

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.134, the signature of Mr. James R. Miner appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Ms. Miner desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted.

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 3687 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/ Petitions Examiner, Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

			PATENT (37 CFF	₹ 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6977375	2005-12-20	09/789,180	2001-02-19	
of the actual U.S. a 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small en	itity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code (1551)		Fee 3 ½ year	Code (2551)
7 ½ year	(1552)		7 ½ year	(2552)
11 ½ year	r (1553)		11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		this petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE	DELAYED PAYM	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNA	TORY OR SIGNATOR	RIES
	states: "Any petition und fice, or by the patented			ttorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am		
An attorney	or agent registered to	practice before th	e Patent and Tradema	ark Office
A sole pater	ntee			
O A joint pater	ntee; I certify that I am	authorized to sigr	n this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are s	igning this e-petiti	on	
The assigne	ee of record of the entir	e interest		

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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	The Assignee of record of the entire interest					
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest						
Signature	gnature /Lynn Barringer/ Date (YYYY-MM-DD) 2011-12-16			2011-12-16		
Name	Lynn Barringer					
Enter Reel an	Enter Reel and Frame Number Remove					
Reel Number 024342 Frame Number 0790						
Click ADD for a	lick ADD for additional Reel Number and Frame Number Add					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
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**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6977375

Issue Date: December 20,2005

:DECISION GRANTING PETITION Application No. 09789180 :UNDER 37 CFR 1.378(c)

February 19,2001 Filed:

Attorney Docket No. ID0015US

December 16,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

December 16,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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	Janua Deta		PATENT (37 CFF	( 1.070(0))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6596266	2003-07-22	09789294	2001-02-20	
of the actual U.S. a 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY	ims, or has previously	claimed, small er	ntity status. See 37 CI	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
3 ½ year	(1551)			(2552)
7 ½ year 11 ½ year	(1552) · (1553)		11 ½ year	(2553)
	(1333)		11.72,000	(2000)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	1558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		this petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) REINSTATED	REQUEST THAT THE	DELAYED PAYM	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNA	TORY OR SIGNATOR	RIES
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent tt."
I certify, in accorda	ance with 37 CFR 1.4(d	d)(4) that I am		
An attorney	or agent registered to	practice before th	e Patent and Tradema	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sigr	n this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are s	igning this e-petiti	ion	
The assigne	ee of record of the entir	e interest		

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	Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Timothy H. Van Dyke/	Date (YYYY-MM-DD)	2011-11-02			
Name	Timothy H. Van Dyke	Registration Number	43218			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6596266

Issue Date:

July 22,2003

Application No. 09789294

Filed:

February 20,2001

Attorney Docket No. NSI-100R

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

November 2,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 7.5

The petition is **GRANTED**.

November 2,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Mail Date: 11/23/2010

: DECISION ON REQUEST FOR

: RECALCULATION of PATENT

: TERM ADJUSTMENT IN VIEW

: OF WYETH

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 525 B STREET SUITE 2200 SAN DIEGO, CA 92101

Applicant : Pranesh Sinha

**Patent Number** : 6944188 **Issue Date** : 09/13/2005

Application No: 09/790,443

**Filed** : 02/21/2001

The Patentee's Request for Recalculation is **DISMISSED**.

This Request is deemed ineligible for consideration for one or more of the following reasons:

- (A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;
- (B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;
- (C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;
- (D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;
- (E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);
- (F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A) concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154 (b) (4) (A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b) (4) (A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.



Commissioner for Patents United States Patent and Trademark Office P.O: Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED

GENERAL ELECTRIC COMPANY 41 Woodford Avenue Plainville CT 06062

MAR 04 2011

OFFICE OF
In re Application of : DATA MANAGEMENT
Randall Lee Greenberg, et al : DECISION ON PETITION

Application No. 09/790848

Filed: 02/22/2001 :

Attorney Docket No. GEN-0244

This is a decision on the Second Request for Withdrawal of Abandonment received in the United States Patent and Trademark Office (USPTO) on July 27, 2006. This Petition is being treated as a Request to Reconsider the Petition Decision of June 23, 2006.

The previous Decision has been reconsidered. The Petition filed on June 12, 2003 is GRANTED.

The application was held abandoned for failure to timely pay the required issue fee within the statutory period as required by and within the three-month period set in, the Notice of Allowance mailed August 27, 2002. The issue fee transmittal was received on December 2, 2002. However, it appeared at that time that insufficient funds were in the designated deposit account. This insufficiency was documented in the official file wrapper for this application. Therefore, a Notice of Abandonment was mailed on January 9, 2003.

Petitioner provides evidence that the designated deposit account upon which the issue fee payment was charged contained sufficient funds to cover the charge continuously for at least the period of December 2, 2002 through December 4, 2002. The documentation concerning the insufficient funds in the file wrapper indicated to the contrary in that there were insufficient funds on December 3 to charge the issue fee. Upon investigation of the USPTO financial records, it is concluded that the designated deposit account did indeed have sufficient funds and the documentation concerning insufficient funds in the file wrapper was in error.

In view of the above findings, the application is returned to pending status. The issue fee payment will be charged against the designated Deposit Account listed on the issue fee transmittal submitted on 12/2/2002. The Office of Data Management will process the application in preparation for the assignment of a patent number and issue date.

Telephone inquires relating to this matter may be directed to the undersigned in the Office of Data Management at 571-272-4200.

Kimberly Terrell, Manager Office of Data Management Patent Publication Branch PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
		EXPIRED PA	•	-K 1.376(C))		
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DE	Docket Number (if applicable)		
6481894	2002-11-19	09791335	2001-02-23	IR-2882		
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).						
SMALL ENTITY Patentee clai	ims, or has previously	claimed, small enti	ty status. See 37	CFR 1.27.		
	EMENT TO SMALL EN to longer entitled to sm		see 37 CFR 1.27(g	)		
NOT Small Entity			Small Entity			
Fee ○ 3½ year	Code (1551)		Fee 3 ½ yea	Code (2551)		
<ul><li>7 ½ year</li></ul>	(1552)		7 ½ yea	(2552)		
11 ½ year	(1553)		◯ 11 ½ ye	ar (2553)		
SURCHARGE The surcharge requestion of the maintenance		)(2) (Fee Code 15	558) must be paid	as a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must be		is petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	EQUEST THAT THE [	DELAYED PAYME	NT OF THE MAIN	TENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNAT	DRIES		
	tates: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent est."		
I certify, in accorda	nce with 37 CFR 1.4(c	)(4) that I am				
An attorney	or agent registered to	practice before the	Patent and Trade	mark Office		
A sole pater	itee					
A joint pater	itee; I certify that I am	authorized to sign	this submission or	behalf of all the other patentees.		
A joint pater	itee; all of whom are si	gning this e-petitio	n			
The assigne	e of record of the entire	e interest				

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Edward F. Murphy, III/	Date (YYYY-MM-DD)	2011-04-04			
Name	Edward F. Murphy, III	Registration Number	38251			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6481894

Issue Date:

November 19,2002

Application No. 09791335

Filed:

February 23,2001

Attorney Docket No. IR-2882(MH)

April 4,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

April 4,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

<i>.</i> /*	SPE RESPONSE FOR CER	RTIFICATE OF CORRECTION
DATE	:06/21/11	•
TO SPE OF	: ART UNIT1716 (current AU 17	16)
SUBJECT	: Request for Certificate of Correction for A	Appl. No.: <u>09791793</u> Patent No.: <u>6669809</u>
		CofC mailroom date: 06/13/11
Please resp FOR IFW F	ond to this request for a certificate ILES:	e of correction within 7 days.
the IFW app	ew the requested changes/correcti- plication image. No new matter sh the claims be changed.	ons as shown in the <b>COCIN</b> document(s) in ould be introduced, nor should the scope or
Please com using docum	plete the response (see below) an nent code <b>COCX</b> .	d forward the completed response to scanning
FOR PAPE	R FILES:	
Please revie correction.	ew the requested changes/correction	ons as shown in the attached certificate of low) and forward it with the file to:
Rand Palm Note:I.D	ficates of Correction Branch (Cololph Square – 9D10-A Location 7580  S.S.  For Your Assistance	Lamonte Newsome  Certificates of Correction Branch  571-272-3421
	t for issuing the above-identified	d correction(s) is hereby:
Note your decision	on the appropriate box.	
X	Approved	All changes apply.
	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments	Approved. The IDS of 11-20-2002 was	considered by the Examnier on 4/17/2003.

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

•		
 SPE RESPONS	SE FOR CERTIFICATE OF CORRECTION	
•		
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306 (REV. 7/03)		

Commissioner for Patents United States Patent and Trademark Office P O Box 1450

# LAW OFFICE OF DALE B. HALLING 3595 FOUNTAIN BOULEVARD SUITE A2 **COLORADO SPRINGS CO 80910**

MAILED OCT 0 4 2011 OFFICE OF PETITIONS

In re Patent No. 6,570,903

Issue Date: May 27, 2003

Application No. 09/791,866

Filed: February 26, 2001

**ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed September 9, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified application.

## The petition is **GRANTED**.

The patent expired on May 28, 2011 for failure to pay the seven and one half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provide in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mailing date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 01.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

Anthony Knight

Director

Office of Petitions

cc: David Neumann

Neumann Systems Group, Inc. 890 Elkton Drive, Suite 101 Colorado Springs, CO 80907

## SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	0	or order on obtain lowing or contribution
		<b>Paper No</b> .:20110624
DATE	: August 03, 2010	
TO SPE C	OF: ART UNIT 1761	
SUBJECT	: Request for Certifi	cate of Correction on Patent No.: 6,821,451
A response	e is requested with respec	t to the accompanying request for a certificate of correction.
Certificat	•	turn with file, within <b>7</b> days to: <b>ch - ST (South Tower) 9A22</b> 3) 305-8309
read as she		sted, correcting Office and/or Applicant's errors, should the patent orrection? No new matter should be introduced, nor should the scope or
Thank Yo	u For Your Assistanc	Certificates of Correction Branch
•	est for issuing the about sion on the appropriated box.	ove-identified correction(s) is hereby:
$\boxtimes$	Approved	All changes apply.
	Approved in Part	Specify below which changes <b>do not</b> apply.
	Denied	State the reasons for denial below.
Commen	ts:	
Should be	entered since it is corr	ecting an obvious error in a chemical structure
		(Horald V. Dyon)
		/Harold Y. Pyon/ SPE 1761



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

AT&T LEGAL DEPARTMENT - HFZ ATTN. PATENT DOCKETING ONE AT&T WAY ROOM 2A-207 BEDMINSTOR NJ 07921

# MAILED

MAR 02 2011

OFFICE OF PETITIONS

In re Patent No. 6,628,774 Issue Date: September 30, 2003 Application No. 09/792,105

Filed: February 22, 2001

Attorney Docket No. A00320-2

: DECISION GRANTING PETITION : UNDER 37 CFR 1.78(a)(3) AND

: REQUEST FOR CERTIFICATE OF

: CORRECTION

This is a decision on the petition, filed October 11, 2010, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 09/197,386, filed November 20, 1998, by way of a certificate of correction.

## The petition is **granted**.

A review of the file record fails to disclose that a claim for the benefit of priority to the abovenoted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed February 22, 2001. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and

a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

As the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

A corrected Filing Receipt, which includes the priority claim to the above-noted, prior-filed nonprovisional application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

The \$1,410 surcharge fee, as well as the \$100 certificate of correction fee, has been submitted by petitioners.

Any inquiries concerning this decision may be directed to Michelle R. Eason at (571) 272-4231.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

/Thurman K. Page/ Thurman K. Page Petitions Examiner Office of Petitions

ATTACHMENT: Corrected Filing Receipt



### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. BOX 1450 Alexandria, Virginia 22313-1450

1	A DDI ICATION	EV DIG	CDD ADT				
	APPLICATION	FILING or	GRP ART				
	NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
•	09/792 105	02/22/2001	2642	1010	A00320-2	5	1

.

CONFIRMATION NO. 8544
CORRECTED FILING RECEIPT

\*OC00000046239324\*

83417
AT&T Legal Department - HFZ
ATTN. Patent Docketing
One AT&T Way
Room 2A-207
Bedminstor, NJ 07921

Date Mailed: 02/28/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

#### Applicant(s)

Pitsa Madoch, Glenview, IL; John Wesley Moss, Lake Zurich, IL; Richard John Ebel, Algonquin, IL; Gerald Joseph Steffgen, Orland Park, IL; Carlos H. Donoso, Bartlett, IL;

### **Assignment For Published Patent Application**

**Ameritech Corporation** 

Power of Attorney: The patent practitioners associated with Customer Number 34431

## Domestic Priority data as claimed by applicant

This application is a CON of 09/197,386 11/20/1998 PAT 6,400,818 which is a CIP of 08/768,382 12/17/1996 PAT 5,917,899 and is a CIP of 08/766,598 12/12/1996 PAT 5,987,111

**Foreign Applications** (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see <a href="http://www.uspto.gov">http://www.uspto.gov</a> for more information.)

#### If Required, Foreign Filing License Granted: 03/17/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/792.105** 

Projected Publication Date: Not Applicable

Non-Publication Request: No Early Publication Request: No

page 1 of 3

Title

METHOD OF ROUTING INTERLATA NETWORK TRAFFIC

#### **Preliminary Class**

379

## PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

### LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

#### **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

# MAILED

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAR 3 1 2011

PCT LEGAL ADMINISTRATION

Gregory A. Nelson Novak Druce & Quigg LLP 525 Okeechobee Blvd **Suite 1500** West Palm Beach FL 33401

In re Application of: PIRIM, Patrick.

U.S. Application No.: 09/792,294 **DECISION ON PETITIONS** U.S. Patent No.: 7181047 UNDER 37 CFR 1.78(a)(3) Filing Date: February 23, 2001 AND 1.55(c))

Attorney's Docket No.: 20046H-000310US

For: **IMAGE PROCESSING APPARATUS** AND METHOD

This decision is issued in response to "PETITION TO ACCEPT UNINTENTIONALLY DELAYED PRIORITY CLAIMS UNDER 37 CFR §§ 1.55(c) AND 1.78(a)(3)" filed August 20, 2010. The petition under 37 CFR 1.78(a)(3) seeks to correct the domestic priority claim in the above-captioned patent to identify the patent as: (1) a continuation-in-part (CIP) of U.S. application number 09/230,502, which is a national stage under 35 U.S.C. 371 of PCT/FR97/01354; and (2) a CIP of PCT/EP98/05383. The petition under 37 CFR 1.55(c) seeks to add an unintentionally delayed claim of foreign priority to French application FR 9609420.

For the reasons set forth below, the petitions are DISMISSED without prejudice.

#### 1. 37 CFR 1.78(a)(3)

The above-captioned U.S. patent issued from an application filed after November 29, 2000, and the corrected benefit claim under 35 U.S.C. 120 is submitted after the expiration of the time period specified in 37 CFR 1.78(a)(2)(ii). Under the circumstances present here, the petition is properly considered under 37 CFR 1.78(a)(3). See MPEP section 1481.03.

<sup>&</sup>lt;sup>1</sup> The patent as issued was identified as a CIP of U.S. application number 09/230,502, which was identified as a CIP of PCT/EP98/05383.

<sup>&</sup>lt;sup>2</sup> It is noted that the addition of the statement identifying U.S. application number 09/230,502 as the national stage of PCT/FR97/01354 is not considered the addition of a new benefit claim that requires a petition under 37 CFR 1.78. See MPEP section 1893.03(c), "a national stage application submitted under 35 U.S.C. 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the international filing date of the international application." See also Broadcast Innovation, L.L.C. and IO Research PTY LTD v. Charter Communications, Inc. and Comcast Corporation, 420 F.3d 1364, 1367 (Fed. Cir., Aug 19, 2005): "Where proper reference to a national stage application exists, no reference to the corresponding PCT application is required because the national stage application effectively has the same U.S. filing date as the PCT application."

A grantable petition under 37 CFR 1.78(a)(3) must be accompanied by the following:

- (1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 CFR 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

The present petition fails to comply with item (1) above.

37 CFR 1.78(a)(2)(iii) states that the required reference to the prior-filed application(s) "must be included in an application data sheet (37 CFR 1.76) or the specification must be amended to contain such reference in the first sentence(s) following the title." Petitioner here has filed a Certificate of Correction setting forth the corrected reference to the prior-filed applications; however, petitioner did not include an accompanying amendment to the specification of the application or a supplemental application data sheet. Accordingly, petitioner has not provided the reference to the prior-filed applications in the form required by 37 CFR 1.78.

Based on the above, the petition under 37 CFR 1.78(a)(3) may not be granted on the present record.

#### 2. <u>37 CFR 1.55(c)</u>

The above-captioned U.S. patent issued from an application filed after November 29, 2000, and the foreign priority claim under 35 U.S.C. 119(a)-(d) or 365(a) directed to French application number FR 9609420 was not submitted prior to the expiration of the time period specified in 37 CFR 1.55(a)(1). Accordingly, this is an appropriate petition under the provisions of 37 CFR 1.55(c).<sup>3</sup>

A grantable petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for foreign priority requires the following:

- (1) the claim under 35 U.S.C. 119(a)-(d) or 365(a) and this section to the prior foreign application, unless previously submitted;
- (2) the surcharge as set forth in 37 CFR 1.17(t);
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional.

<sup>&</sup>lt;sup>3</sup> As noted in the present petition, pursuant to MPEP section 201.16, a certificate of correction accompanied by a grantable petition under 37 CFR 1.55(c) is permissible for adding an unintentionally delayed foreign priority claim to an issued patent where the foreign priority claim to be added was perfected in a parent application prior to the issuance of the patent.

The present petition fails to comply with item (1) above.

Pursuant to MPEP section 201.13, a claim for foreign priority must be contained in either an oath or declaration (37 CFR 1.63(c)(2)) or an application data sheet (37 CFR 1.76). Petitioner here has filed a Certificate of Correction setting forth the foreign priority claim; however, petitioner did not include an accompanying oath or declaration or a supplemental application data sheet containing such claim. Accordingly, petitioner has not submitted the foreign priority claim in an acceptable form.

Based on the above, applicants have failed to satisfy the requirements for a grantable petition under 357 CFR 1.55(c) for acceptance of an unintentionally delayed foreign benefit claim.

### **CONCLUSION**

For the reasons set forth above, the petitions under 37 CFR 1.78(a)(3) and 1.55(c) are **DISMISSED** without prejudice.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/RichardMRoss/

Richard M. Ross Attorney Advisor Office of PCT Legal Administration Telephone: (571) 272-3296





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Gregory A. Nelson Novak Druce & Quigg LLP 525 Okeechobee Blvd **Suite 1500** West Palm Beach FL 33401

In re Application of: PIRIM, Patrick

U.S. Application No.: 09/792,294

U.S. Patent No.: 7181047

Filing Date: February 23, 2001

Attorney's Docket No.: 20046H-000310US

**IMAGE PROCESSING APPARATUS** 

AND METHOD

DECISION ON RENEWED PETITIONS UNDER

37 CFR 1.78(a)(3) AND 1.55(c))

This decision is issued in response to the "Request For Reconsideration Of Petition Decision" filed on 05 April 2011, considered herein as a renewed petition under 37 CFR 1.78(a)(3) and 1.55(c). The renewed petition under 37 CFR 1.78(a)(3) seeks to correct the domestic priority claim in the above-captioned patent to identify the patent as: (1) a continuationin-part (CIP) of U.S. application number 09/230,502, which is a national stage under 35 U.S.C. 371 of PCT/FR97/01354; and (2) a CIP of PCT/EP98/05383; the renewed petition under 37 CFR 1.55(c) seeks to add an unintentionally delayed claim of foreign priority to French application FR 9609420.

For the reasons set forth below, the renewed petition is **DISMISSED** without prejudice.

#### 1. 37 CFR 1.78(a)(3)

As set forth in the previous decision, one of the requirements of a grantable petition under 37 CFR 1.78(a) is an acceptable amendment adding proper references to the prior-filed applications to the first sentence of the application after the title, or, in the alternative, a supplemental application data sheet (ADS) in compliance with 37 CFR 1.76 that contains such references. As indicated in the previous decision, the amendment or ADS is required even under the circumstances present here, where the application has issued as a patent and applicants have filed a Certificate of Correction to add the desired priority claims to the patent.

In the present renewed petition, applicant argues that an amendment to the application or ADS is not required for a grantable petition under the present circumstances. However, applicant's position is not consistent with the controlling statute, 35 U.S.C. 120, which reads in part as follows (emphasis added):

> No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the

application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

That the above statutory-requirement necessitates the filing of an amendment to the application, in addition to the Certificate of Correction, is made clear on the USPTO Website (emphasis added):<sup>1</sup>

CX13. Can applicant file an amendment and a petition under 37 CFR 1.78(a) without filing a request for certificate of correction or a reissue application to correct a patent that issued from an application filed on or after November 29, 2000 to add a benefit claim of a prior-filed non-provisional application? (added 4Feb2005)

No, applicant must file either a reissue application or a request for certificate of correction with an amendment adding the specific reference of the prior-filed application to the first sentence of the specification and a petition under 37 CFR 1.78(a)(3) to correct the patent. See MPEP 1401-1460 for more information on reissue applications and MPEP 1481 for more information on requests for certificate of correction.

The present renewed petition does not include an acceptable amendment directed to the first sentence of the application adding the required references to the prior-filed applications (or a supplemental ADS containing such references), as required for a grantable petition under 37 CFR 1.78(a)(3). It is noted that applicant included with the present petition an amendment directed to the "Related U.S. Application Data" section of the patent. However, 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(iii) require an acceptable amendment to the first sentence of the application, not an amendment directed to the patent. Accordingly, the proposed amendment to the patent included with the present renewed petition does not satisfy the outstanding requirement of a grantable petition under 37 CFR 1.78(a)(3).

In view of the above, applicant has not satisfied the final outstanding requirement of a grantable petition under 37 CFR 1.78(a)(3). The present renewed petition is therefore appropriately dismissed.

### 2. <u>37 CFR 1.55(e)</u>

As set forth in the previous decision, one of the requirements of a grantable petition under 37 CFR 1.55(c) is either an oath or declaration (37 CFR 1.63(c)(2)) or an ADS (37 CFR 1.76) containing the foreign priority claim. This requirement is applicable with respect to all petitions filed under 37 CFR 1.55(c) and it falls within the discretion of the Office for setting the procedures for acceptance of a delayed claim of foreign priority (see 35 U.S.C. 119(b)(2)). The requirement is also consistent with 37 CFR 1.63(c)(2), which expressly requires that any foreign priority claim that is not set forth in an ADS must be included in the declaration.

<sup>&</sup>lt;sup>1</sup> <u>See Q&As regarding the American Inventors Protection Act (AIPA)</u>, specifically with respect to the 18 month publication rule and priority claims: http://www.uspto.gov/patents/law/aipa/18month/18monthfaq.jsp#cx

MPEP section 201.13 is consistent with the above requirement. As quoted by applicant, section 201.13 states that the "priority claim need not be in any special form and may be a statement signed by a registered attorney or agent." While this statement confirms that no specific language is required for the claim (i.e., no "special form") and that the claim may be signed by the attorney, rather than the applicant (i.e., in an ADS), it does not indicate that the USPTO does not require such claim to be contained in a specific document. In fact, the next quoted sentence specifically identifies the declaration or an ADS as the proper location for a foreign priority claim submitted on filing.

Applicant's reliance on MPEP section 201.16 is also misplaced. This section specifically states that any Certificate of Correction must be accompanied by a petition for an unintentionally delayed foreign priority claim under 37 CFR 1.55(c). The section does not indicate that submission of the Certificate of Correction somehow reduces the requirements of the accompanying petition under 37 CFR 1.55(c) to eliminate the need for the declaration or ADS containing the priority claim.

The present renewed petition under 37 CFR 1.55(c) does not include the required declaration or ADS containing the delayed foreign priority. The petition is therefore appropriately dismissed.

#### **CONCLUSION**

For the reasons set forth above, the renewed petitions under 37 CFR 1.78(a)(3) and 1.55(c) are **DISMISSED** without prejudice.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/RichardMRoss/

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450

### **MAILED**

DEC 22 2011

Gregory A. Nelson Novak Druce & Quigg LLP 525 Okeechobee Blvd, Suite 1500 West Palm Beach FL 33401

PCT LEGAL ADMINISTRATION

In re Application of: PIRIM, Patrick

U.S. Application No.: 09/792,294

U.S. Patent No.: 7181047 Filing Date: February 23, 2001

Attorney's Docket No.: 20046H-000310US

For: IMAGE PROCESSING APPARATUS

AND METHOD

DECISION ON SECOND RENEWED PETITIONS UNDER

37 CFR 1.78(a)(3)

AND 1.55(c))

In decisions mailed on March 31, 2011 and September 27, 2011, applicant's petition under 37 CFR 1.78(a)(3) and 1.55(c) was dismissed without prejudice. The decisions found that applicant had not satisfied all the requirements for a grantable petition. Specifically, applicant had not provided an amendment to the application or a supplemental application data sheet containing the required references to the prior-filed applications.

On October 28, 2011, applicants filed the "Second Request For Reconsideration Of Petition Decision" considered herein as a renewed petition. On December 19, 2011, the renewed petition was supplemented with a revised "Supplemental Application Data Sheet."

The revised "Supplemental Application Data Sheet" filed on December 19, 2011 includes the required references to the prior-filed applications that are the subject of the present petition. Specifically, the Supplemental Application Data Sheet identifies the present application as: (1) a continuation in part of U.S. application 09/230,502, which is a national stage of PCT/FR97/01354; and (2) a continuation-in-part of PCT/EP98/05383. The Supplemental Application Data Sheet also includes the foreign priority claim to French application 96 09420.

The materials filed with the present renewed petition are accepted as satisfying the final outstanding requirement of a grantable petition. The renewed petition is therefore **GRANTED**.

USPTO records will be updated accordingly.

/RichardMRoss/

Richard M. Ross Attorney Advisor Office of PCT Legal Administration

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OFFICE OF PETITIONS

In re Application of

Falk et al.

Application No. 09/792,396

Filed: February 23, 2001

Attorney Docket No. 1048P001US01

**ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 20, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 28, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. A Notice of Abandonment was mailed February 12, 2008.

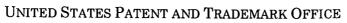
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of \$405 and the submission required by 37 CFR 1.114, (2) the petition fee of \$810 and (3) an adequate statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

This application is being referred to Technology Center AU 3628 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Alicia Kelley Petitions Examiner Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH PA 15205

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OFFICE OF PETITIONS

In re Patent No. 6,628,040

Issue Date: 30 September, 2003

Application No. 09/792,431

Filed: 23 February, 2001 Attorney Docket No. SRIN-N-A102.00-US **DECISION** 

This is a decision on the petition filed on 28 December, 2011, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

### NOTE:

In view of their duty of candor to the Office to properly inquire to ascertain the accuracy of representations made before the Office (see: 37 C.F.R. §1.4, §10.18, MPEP §410), Petitioners always are reminded of the responsibility to review their records and submit accurate information to the Office.

Petitioners also are reminded to chart out the fees paid/fees due/balance due in their submission(s) to the Office. (See, generally: 37 C.F.R. §1.27, §1.28, MPEP §509.02 and 509-03.)

### Petitioner's submission is **ACCEPTED**.

In accordance with the request, status as a Small Entity will be removed, and Petitioner is required to pay fees at the schedule set forth for not-small entities. The additional fees were charged as authorized.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that that those registered to practice <u>and</u> all others who make representations before the Office **must** inquire into the

Patent No. 6,628,040 Application No. 09/792,431

underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>1</sup>

The instant application is released to the IFW Files Repository in due course.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>2</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

<sup>&</sup>lt;sup>1</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

<sup>&</sup>lt;sup>2</sup> The regulations at 37 C.F.R. §1.2 provide:

<sup>§1.2</sup> Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
7111280	2006-09-19	09792473	2001-02-23	40101/02001		
	ims, or has previously	claimed, small ent	ty status. See 37 Cl	FR 1.27.		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee  3 ½ year	Code (1551)		Fee ○ 3 ½ year	Code (2551)		
7 ½ year	(1552)		○ 7½ year	(2552)		
11 ½ year			○ 11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must b		is petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED						
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES						
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."						
I certify, in accordance with 37 CFR 1.4(d)(4) that I am						
An attorney or agent registered to practice before the Patent and Trademark Office						
○ A sole patentee						
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.						
A joint patentee; all of whom are signing this e-petition						
The assignee of record of the entire interest						

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Michael J. Marcin/	Date (YYYY-MM-DD)	2011-02-16		
Name	Michael J. Marcin, Esq.	Registration Number	48198		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

### **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7111280

Issue Date: September 19,2006

:DECISION GRANTING PETITION Application No. 09792473 :UNDER 37 CFR 1.378(c)

February 23,2001 Filed:

Attorney Docket No. 40101/02001

February 16,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

February 16,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FOLEY & LARDNER LLP 975 PAGE MILL ROAD PALO ALTO CA 94304

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OFFICE OF PETITIONS

In re Application of

Belardinelli et al.

Application No. 09/792,617

Filed: February 23, 2001

Attorney Docket No. 045710-2102

**ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 5, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The instant petition lacks item(s) (3). A decision on a previous petition was issued on March 15, 2010, advising the petitioner to file a Petition under 37 CFR 1.137(b). However, the instant petition was not filed until August 5, 2011, well over a year after the previous decision was mailed. Where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or

in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at \*21-\*23. Statements are required from any and all persons then at Foley & Lardner, LLP and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-

/Liana Walsh/ Liana Walsh Petitions Examiner Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

www.uspto.gov

FOLEY & LARDNER LLP 975 PAGE MILL ROAD PALO ALTO CA 94304

MAILED
OCT 1:1 2011
OFFICE OF PETITIONS

In re Application of

Belardinelli et al.

Application No. 09/792,617

Filed: February 23, 2001

Attorney Docket No. 045710-2102

ON PETITION

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed September 30, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition now satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied a proper statement of unintentional delay.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 10/614,702.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

/Liana Walsh/ Liana Walsh Petitions Examiner Office of Petitions



### United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
 09/792,729	02/22/2001	William E. Hewlett	07319-085002	7435
	7590 03/30/2011 Scott C Harris Inc		EXAM	IINER .
PO Box 1389			BRIER, JI	EFFERY A
Rancho Santa F	e, CA 92067		ART UNIT	PAPER NUMBER
			. 2628	
			•	
			NOTIFICATION DATE	DELIVERY MODE
			03/30/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

harris@schiplaw.com uspto@schiplaw.com

### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

## Ex parte WILLIAM E. HEWLETT

Application 09/792,729 Technology Center 2600

### **DECISION ON PETITION**

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed February 16, 2011 ("Petition to Revive").

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

### **FINDINGS**

- 1. On March 3, 2010, Appellant filed an Appeal Brief.
- 2. On March 15, 2010, the Patent Appeal Center Specialist issued a Notification of Non-Compliant Appeal Brief (37 CFR 41.37). The Notification granted Appellant a period of one month or thirty days, whichever was longer, within which to file a corrected brief, i.e., until April 15, 2010.
- 3. On November 4, 2010, having received no response to the Notification of Non-Compliant Appeal Brief of March 15, 2010, the Primary Examiner issued a Notice of Abandonment.

### Application 09/792,729

- 4. On February 16, 2011, Appellant filed the present Petition to Revive and an Appeal Brief.
- 5. In respect to revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:
  - (b) Unintentional. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
  - (1) The reply required to the outstanding Office action or notice, unless previously filed;
  - (2) The petition fee as set forth in § 1.17(m);
  - (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
  - (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.
- 6. The Petition to Revive filed February 16, 2011 was accompanied by:
  - (a) an Appeal Brief;
  - (b) the Petition fee; and
  - (c) A statement that "The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional."

### Application 09/792,729

- 7. There are no facts known by the Office that would cause the Office to question whether either the abandonment or delay in filing the Petition to Revive was unintentional.
- 8. Since the application was filed after June 8, 1995, on February 22, 2001, no terminal disclaimer is required.
- 9. A review of the Appeal Brief filed on February 16, 2011 indicates that it is compliance with 37 C.F.R. § 41.37.

### DISCUSSION

As indicated above, Appellant has complied with all of the requirements of a petition under 37 C.F.R. § 1.137(b) for revival of an unintentionally abandoned application.

### **DECISION**

In view of the foregoing, the Petition to Revive is GRANTED and the Appeal Brief of February 16, 2011 will be returned to the Examiner for preparation of an Examiner's Answer.

Merrell C. Cashion, Jr.

Case Management Administrator

Law Office of Scott C Harris Inc PO Box 1389 Rancho Santa Fe CA 92067

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN					
EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6842845	2005-01-11	09792839	2001-02-23	4419P001X	
				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY Patentee clai	ims, or has previously	claimed, small enti	ity status. See 37 C	FR 1.27.	
	EMENT TO SMALL EN to longer entitled to sm		See 37 CFR 1.27(g)		
NOT Small Entity			Small Entity		
Fee ● 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)	
○ 7 ½ year	(1552)		○ 7½ year	(2552)	
○ 11 ½ year	(1553)			(2553)	
SURCHARGE The surcharge requor the maintenance		)(2) (Fee Code 15	558) must be paid a	s a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED					
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES					
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office					
A sole patentee					
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.					
A joint patentee; all of whom are signing this e-petition					
The assigne	The assignee of record of the entire interest				

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-28		
Name	Kendal M. Sheets	Registration Number	47077		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

### **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6842845

Issue Date:

January 11,2005

Application No. 09792839

Filed:

February 23,2001

Attorney Docket No. 4419P001X

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

September 30,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 30,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspb.gov

MAILED

APR 0.7-2011

MERCHANT & GOULD - COX PO BOX 2903 MINNEAPOLIS MN 55402

OFFICE OF PETITIONS

In re Application of Gordon, et al.

Application No. 09/792,889 : DECISION ACCORDING STATUS

Filed: February 23, 2001 : UNDER 37 CFR 1.47(a)

Attorney Docket No. 60136.0159US01:

This is in response to the petition under 37 CFR 1.47(a), filed October 22, 2001. The petition was recently forwarded to the Office of Petitions for consideration.

The petition under 37 CFR 1.47(a) is **GRANTED**.

Rule 47 applicant has demonstrated that inventors Ludvig and Comito have refused to sign the declaration after having been presented with the application papers.

The petition and declaration have been reviewed and determined to be in compliance with 37 CFR 1.47(a).

The application is hereby accorded Rule 47 status.

As provided in 37 CFR 1.47(c), the Office will provide notice of this application's filing to the non-signing inventors at the last known address provided in the petition. Notice will also be provided in the Official Gazette.

The application is being forwarded to Group Art Unit 3622 to await applicants' submission of the issue fee.

Telephone inquiries related to this decision may be directed to the undersigned at (571)272-3207.

ly y

Cliff Congo Petitions Attorney Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

www.uspto.gov

## MAILED

EDWARD A LUDVIG 3824 WOODLAND WAY REDWOOD CITY CA 94062 APR 07 2011

OFFICE OF PETITIONS

LETTER

In re Application of Gordon, et al.
Application No. 09/792,889

Application No. 09/792,889 : Filed: February 23, 2001 :

Title: Method and Apparatus for Providing Targeted Advertisements

Dear Mr. Ludvig:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 USC 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, agent of record would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (571)272-3207. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Wy

Cliff Congo Petitions Attorney Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

JOHN P COMITO 907 PLEASANT HILL RD REDWOOD CITY CA 94061 MAILED

APR 0.7 2011

OFFICE OF PETITIONS

In re Application of :

Gordon, et al.

Application No. 09/792,889

Filed: February 23, 2001

Title: Method and Apparatus for Providing Targeted Advertisements

LETTER

Dear Mr. Comito:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 USC 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, agent of record would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (571)272-3207. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

W G

Cliff Congo Petitions Attorney Office of Petitions



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6349874

Issue Date:

February 26,2002

Application No. 09793469

Filed:

February 27,2001

Attorney Docket No. 12695-20

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

August 16,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

August 16,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN				
EXPIRED PATENT (37 CFR 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6349874	2002-02-26	09793469	2001-02-27	12695-20
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY    Patentee cla	ims, or has previously	claimed, small enti	ity status. See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
○ 7½ year	(1552)		● 7½ year	(2552)
	(1553)		○ 11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED				
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES				
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."				
I certify, in accordance with 37 CFR 1.4(d)(4) that I am				
An attorney or agent registered to practice before the Patent and Trademark Office				
A sole patentee				
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.				
A joint patentee; all of whom are signing this e-petition				
The assignee of record of the entire interest				

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner					
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Stephen C. Smith/	Date (YYYY-MM-DD)	2010-08-16		
Name	Stephen C. Smith	Registration Number	56250		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

### **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

IBM CORPORATION
PO BOX 12195
DEPT YXSA, BLDG 002
RESEARCH TRIANGLE PARK NC 27709

MAILED MAY 192011

OFFICE OF PETITIONS

In re Patent Number: 6,618,270

Issue Date: 09/09/2003

Application Number: 09/793,535

Filing or 371(c) Date: 02/27/2001

Attorney Docket Number: RPS920075002US1

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on April 5, 2011.

The Office no longer investigates or rejects original or reissue patents under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3231.

Douglas Wood Attorney

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

KF ROSS PC 311 EAST YORK STREET SAVANNAH GA 31401

MAILED

OCT 19 2011

In re Patent No. 6,684,602 : OFFICE OF PETITIONS

Issued: February 3, 2004 :

Application No. 09/793,726 : ON PETITION

Filed: February 26, 2001 :

Attorney Docket No. 21727

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 23, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MAILED NOV 03 2011

OFFICE OF PETITIONS

KF ROSS PC 311 EAST YORK STREET SAVANNAH, GA 31401

In re Patent No. 6,341,630 :

Issue Date: January 29, 2002

Application No. 09/793,739 : Filed: February 26, 2001 :

Filed: February 26, 2001 Attorney Docket No. 21726 **NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/ April M. Wise Petitions Examiner Office of Petitions Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6411194	2002-06-25	09794596	2001-02-27				
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY							
Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.							
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
11 ½ year			11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	s a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
	states: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."			
I certify, in accorda	ance with 37 CFR 1.4(c	i)(4) that I am					
An attorney     A sole pater	or agent registered to	oractice before the	Patent and Tradem	ark Office			
		authorized to sign	this submission on I	pehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petition	on				
The assigne	ee of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner					
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Marvin Motsenbocker/	Date (YYYY-MM-DD)	2012-03-22			
Name	Marvin A. Motsenbocker	Registration Number	36614			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6411194

June 25,2002

Issue Date: Application No. 09794596

Filed:

February 27,2001

Attorney Docket No. MM4409

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

March 22,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 22,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

DATE	: 08-30-2010	Paper No.:
TO SPE OF		
SUBJECT	: Request for Certificate of Correc	tion for Appl. No: 09/795006 Patent No: 6965010 tificate of correction within 7 days.
FOR IFW F	FILES:	
IFW applica	•	orrections as shown in the <b>COCIN</b> document(s) in th should be introduced, nor should the scope or
	nplete the response (see beloment code <b>COCX</b> .	ow) and forward the completed response to scanning
FOR PAPE	R FILES:	
		orrections as shown in the attached certificate of see below) and forward it with the file to:
Cart	ificates of Correction Bran	ch (Co f C)
Rand	dolph Square – 9D10-A n Location 7580	
Rand Paln	dolph Square – 9D10-A	<u>Eva James</u>
Rand Paln	dolph Square – 9D10-A n Location 7580	Eva James  Certificates of Correction Branch
Rand Paln Should this	dolph Square – 9D10-A n Location 7580	<u>Eva James</u>
Rand Palm Should this Thank You The reques	dolph Square – 9D10-A n Location 7580 paragraph be entered?	Eva James  Certificates of Correction Branch
Rand Palm Should this Thank You The reques Note your decision	dolph Square – 9D10-A n Location 7580 paragraph be entered? u For Your Assistance st for issuing the above-ide	Eva James  Certificates of Correction Branch  703-756-1583
Rand Palm Should this Thank You The reques Note your decision	dolph Square – 9D10-A n Location 7580  paragraph be entered?  For Your Assistance  st for issuing the above-ide on on the appropriate box.	Eva James  Certificates of Correction Branch 703-756-1583  entified correction(s) is hereby:
Rand Palm Should this Thank You The request Note your decision	dolph Square – 9D10-A n Location 7580  paragraph be entered?  I For Your Assistance  st for issuing the above-ide on on the appropriate box.  (Approved  Approved in Part	Eva James  Certificates of Correction Branch 703-756-1583  entified correction(s) is hereby:  All changes apply.
Rand Palm Should this Thank You The reques Note your decision	dolph Square – 9D10-A n Location 7580  paragraph be entered?  I For Your Assistance  st for issuing the above-ide on on the appropriate box.  (Approved  Approved in Part	Eva James  Certificates of Correction Branch 703-756-1583  entified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.
Rand Palm Should this Thank You The reques Note your decision	dolph Square – 9D10-A n Location 7580  paragraph be entered?  I For Your Assistance  st for issuing the above-ide on on the appropriate box.  (Approved  Approved in Part	Eva James  Certificates of Correction Branch 703-756-1583  entified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

1625 Art Unit

/Janet L. Andres/

PTOL-306 (REV. 7/03)

SPE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6401740	2002-06-11	09795041	2001-02-26	2173.1008-001			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).							
SMALL ENTITY  Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.							
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee 3 ½ year	Code (1551)		Fee	Code (2551)			
● 7 ½ year	(1552)		○ 7½ year	(2552)			
○ 11 ½ year	r (1553)		11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent st."			
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am					
	or agent registered to p	practice before the	Patent and Tradem	ark Office			
A sole pater	ntee						
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	behalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	ee of record of the entir	e interest					

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner						
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Rodney D. Johnson/	Date (YYYY-MM-DD)	2011-03-14				
Name	Rodney D. Johnson	Registration Number	36558				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6401740

Issue Date:

June 11,2002

Application No. 09795041

Filed:

February 26,2001

Attorney Docket No. 2173.1008-001

March 14,2011

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 14,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.usblo.gov

Paper No.

MAYER & WILLIAMS PC 251 NORTH AVENUE WEST Suite 201 WESTFIELD NJ 07090 MAILED

JAN 192011

OFFICE OF PETITIONS

In re Patent No. 7,739,335

Siegel et al.

Issue Date: June 15, 2010

Application No. 09/795,685

Filed: February 28, 2001

Atty Docket No. 50P4087.01

: DECISION ON REQUEST

: FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: and

: NOTICE OF INTENT TO ISSUE

: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on August 13, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand, eight hundred and seventy-five (2875) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two thousand, eight hundred and thirty-two (2832) days is **GRANTED to the extent indicated herein**.

Petitioner has indicated that this patent is not subject to a terminal disclaimer. 1

This patent issued on June 15, 2010, with a patent term adjustment of 2318 days.

The Office has determined that the patent term adjustment for the above-identified patent is 2832 days.

There are three periods that are in dispute.

<sup>1</sup> Second page of the statement accompanying petition, numbered as page 4.

Regarding the first period that is in dispute, pursuant to 37 C.F.R. § 1.703(a)(1), the term of the patent will be adjusted by "[t]he number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first."

This application was filed on February 28, 2001, and a non-final Office action was mailed 14 months and 920 (not 919)<sup>2</sup> days later. As such, an adjustment of 920 days is warranted.

Regarding the second period that is in dispute, this application issued into a patent three years and  $2299 \text{ (not } 2298)^3 \text{ days after filing.}$ 

Regarding the third period that is in dispute, pursuant to 37 C.F.R. § 1.704(c)(10), the "[s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of...[t]he number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or...[f]our months."

The issue fee was submitted on May 3, 2010. Corrected drawings were received on May 3, 2010, and the patent issued 43 days later on June 15, 2010. This warrants a reduction of 44 days pursuant to 37 C.F.R. § 1.704(c)(10), as the date on which the supplemental response was filed is included in the period of delay. Petitioner argues that "no deduction for submission of the formal drawings should be applied as they were submitted in advance of the June 13, 2010 due date." This argument misses the point: pursuant to 37 C.F.R. § 1.704(c)(10), the submission

<sup>&</sup>lt;sup>2</sup> Petition, page 4.

<sup>&</sup>lt;sup>3</sup> <u>Id</u>. at 5.

<sup>&</sup>lt;sup>4</sup> Id.

The Office mailed a "notice to file corrected application papers" on April 13, 2010, which set a two-month period for response. As such, the due date for responding was June 13, 2010.

of corrected drawings after the payment of the issue fee constitutes a failure "to engage in reasonable efforts to conclude processing or examination of an application," and as such, a reduction pursuant to this Rule is warranted.

Moreover, a notice of appeal was filed on November 10, 2005, and a Decision on Appeal was mailed on January 22, 2010. The 1535 days of the over three year period consumed by appellate review, beginning on November 10, 2005 and ending on January 22, 2010, are not included in the B delay. See 35 U.S.C. \$ 154(b)(1)(B)(ii).

It follows that the examination delay totals 2455 (920 + 1535) days. The Applicant delay totals 138 (64 + 44 + 2) days. over three-year period totals 2299 days. The period of overlap totals 249 days.

As such, the patent term adjustment is increased by 2832 (2455 days of examination delay plus 764 (2299 over three-years minus the aforementioned excluded 1535 days) B delay minus 249 days of overlap minus 138 days of Applicant delay) days, not 2875 days.

The Office acknowledges submission of the \$200.00 fee. additional fees are required.

The Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two thousand, eight hundred and thirty-two (2832) days.

Patent No. 7,739,335 Application No. 09/795,685

Page 4

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight

Director

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT

: 7,739,335 B2

DATED

June 15, 2010

**DRAFT** 

INVENTOR(S): Siegel et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2318 days

Delete the phrase "by 2318 days" and insert - by 2832 days--



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS CO 80528

MAILED

JUN 0 1 2011

OFFICE OF PETITIONS

In re Application of

Nancy Kirkconnell-Ewing et al.

Application No. 09/796,165

Filed: February 28, 2001

Attorney Docket No. 10011599-1

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed on November 30, 2007, which is being treated as a petition requesting that the requirement of 37 CFR 41.41(a)(1) be waived or suspended pursuant to 37 CFR 1.183 in order to file an amended reply brief after the two month response time.

The petition is granted to the extent indicated.

A reply brief was filed November 30, 2007. This reply was filed outside the two month period set forth in 37 CFR 41.41(a)(1). On October 27, 2008, the examiner entered and considered the reply brief. In view of the above, the examiner's consideration of the reply brief of October 27, 2008 will not be disturbed.

Telephone inquiries regarding this communication should be directed to Carl Friedman at (571) 272-6842.

Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

NOLTE NOLTE & HUNTER CHRISTOPHER B GARVEY 1077 NORTHERN BLVD ROSLYN NY 11576

# MAILED MAR 1 4 2011 OFFICE OF PETITIONS

In re Patent No. 7,827,581

: DECISION ON

Eiger, et al.

: REQUEST FOR RECONSIDERATION

Application No. 09/796,270

: of PATENT TERM ADJUSTMENT

Issue Date: November 2, 2010

: and

Filed: February 28, 2001

: NOTICE OF INTENT TO ISSUE

Attorney Docket No. EIGER ET AL-1

: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT Under Rule 1.705(d)", filed January 3, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 2773 days to 3018 days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED** to the extent indicated herein.

On November 2, 2010, the instant application matured into U.S. Patent No. 7,827,581 with a patent term adjustment of 2773 days. The Office determined a patent term adjustment of 2773 days based upon 1060 days of Office delay pursuant to 37 CFR 1.703(a)(1), 61 days of Office delay pursuant to 37 CFR 1.703(a)(4), 1205 days of Office delay pursuant to 37 CFR 1.703(e), and 988 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 92 days of Applicant delay pursuant to 37 CFR 1.704(b) and 1 and 387 days of Applicant delay pursuant to 37 CFR 1.704(c)(8).

Patentees are correct that the proper amount of days over 36 months from the filing date of the application until the issue date of the patent was not included in the "B" delay period. The over three year period began on February 29, 2004 and ended on November 2, 2010 (the patent issue date), and is 2439 days. See 35 U.S.C. 154(b)(1)(B). Subtracting the 1205 days that the application was under appeal pursuant to 37 CFR 1.704(b)(4), and the "B" delay period is 1234 days, not 988 days as originally calculated (and one day more than the 1233 days as calculated by Patentees).

In view thereof, the correct number of days of patent term adjustment is **three thousand nineteen (3019)** days (1121 days of "A" delay, 1234 days of "B" delay, and 1205 days of "C" delay, reduced by 480 days of Applicant delay and 61 days of overlap between "A" and "C" delay).

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three thousand nineteen (3019) days.** 

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo, at (571) 272-3207.

Anthody Knight

Director

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

# UNITED STATES PATENT AND TRADEMARK OFFICE **DRAFT CERTIFICATE OF CORRECTION**

PATENT

: 7,827,581 B2

DATED

: November 2, 2010

INVENTOR(S): Eiger et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2773 days.

Delete the phrase "by 2773 days" and insert – by 3019 days--



#### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No.

JACOBSON, PRICE, HOLMAN & STERN PROFESSIONAL LIMITED LIABILITY COMPANY 400 SEVENTH STREET N.W. Washington DC 20004

DEC 192011

MAILED

In re Application of : OFFICE OF PETITIONS

Hearne et al.

Application No. 09/796,688

Patent No.: 6,701,381 : DECISION ON PETITION

Filed: March 2, 2001 : PURSUANT TO

Issued: March 2, 2004 : 37 C.F.R. § 1.28(c)

Title: DATA PROCESSING SYSTEM :

AND DEVELOPMENT METHOD :

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on November 30, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, the small entity fee that was actually paid and when, and the deficiency owed amount.

Petitioner has not identified the total deficiency payment owed.

The requirement that Petitioner must provide the Office with the total deficiency payment owed is waived, sua sponte.

The deficiency payment in the amount of \$1610 has been received.

Application No. 09/796,688

Patent No.: 6,701,381

Decision on Petition pursuant to 37 C.F.R. § 1.28(c)

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

Page 2

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

Paul Shanoski

Senior Attorney

Office of Petitions

<sup>1</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).



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ROBERT N. MONTGOMERY 109 BROWNLEE AVE. BROUSSARD LA 70518-3021 MAILED SEP 26:2011

OFFICE OF PETITIONS

In re Patent No. 6,382,140

Issue Date: May 7, 2002

Application No. 09/796,903

Filed: February 28, 2001

Attorney Docket No: P11134US (82565.24P2)

**DECISION ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed September 1, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

#### The petition is **GRANTED**.

This patent expired on May 7, 2010, for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the

discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The patent file is being forwarded to Files Repository.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

GREGORY C. SMITH 3838 N. CAUSEWAY BLVD., SUITE 3290 METAIRIE, LA 70002-1767



#### UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED MAR 1 4 2011

**OFFICE OF PETITIONS** 

In re Application

Agazzi, et al.

Application No. 09/797,428

Filing or 371(c) Date: February 28, 2001

Dkt. No.: 13436US02

: PATENT TERM ADJUSTMENT

TATENT TERM ADJUSTIMENT

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed February 16, 2011.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 1,261 days, not 108 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is <u>DISMISSED</u> as PREMATURE.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See, § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time

of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee<sup>1</sup>.

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of \$200.00. See, 37 CFR 1.18(e).

However, any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown Petitions Attorney Office of Petitions

<sup>&</sup>lt;sup>1</sup> For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6987428	2006-01-17	09797637	2001-03-01	42390.P100402C			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY							
Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.							
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)				
NOT Small Entity			Small Entity				
Fee  3 ½ year	Code (1551)		Fee  3 ½ year	Code (2551)			
7 ½ year	(1552)		7 ½ year	(2552)			
11 ½ year			○ 11 ½ year	(2553)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."			
I certify, in accorda	ance with 37 CFR 1.4(d	l)(4) that I am					
An attorney	or agent registered to	oractice before the	Patent and Tradema	ark Office			
A sole pater	ntee						
A joint pater	itee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.			
A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	e of record of the entir	e interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner					
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-10-13			
Name	Kendal M. Sheets	Registration Number	47077			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6987428

Issue Date:

January 17,2006

Application No. 09797637

Filed:

March 1,2001

:DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Attorney Docket No. 42390.P100402C

October 14,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

October 14,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS MN 55440-1022

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JUL 15 2011

**OFFICE OF PETITIONS** 

In re Application Jeffrey A. Dean et al. Application No. 09/797,754

Application No. 09/797,754 Filed: March 2, 2001

Attorney Docket No. 16113-1577001

**DECISION ON APPLICATION** 

: FOR PATENT TERM ADJUSTMENT

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed January 31, 2011. Applicant requests that the determination of patent term adjustment be corrected from 1221 days to 1623 days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

On October 29, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 1221 days which includes USPTO delays in the amount of 1414 days and 193 applicant delay days. The instant application for patent term adjustment was timely filed<sup>1</sup> on or before payment of the issue fee.

With respect to the patent term adjustment at the time of the mailing of the notice of allowance, applicants argue that the Patent Term Adjustment history in private PAIR incorrectly indicates that the PTO mailed the Board of Patent Appeals and Interferences Decision reversing the Examiner's decision on November 30, 2006 instead of November 29, 2006. Thus, pursuant to 37 C.F.R. §§ 1.702(b)(4), the PTO Delay should be 1,017 days and not 1,018. Applicants' argument is persuasive. The reduction in the amount of 1,018 days is being removed and a reduction in the amount of 1,017 days is being entered.

Applicants argue also that "a PTO action was due on or before March 29, 2007 (the date that is four months after November 29, 2006, the date on which the Board of Patent Appeals and Interferences Decision was mailed). The PTO mailed a non-final Office Action on March 31, 2008, and as such should have been accorded a PTO Delay of 368 days. The PTO calculated 0 days of PTO Delay for the late non-final Office Action. Applicants respectfully submit that a PTO Delay of 368 days is appropriate for this PTO Delay from March 30, 2007 (the day after the date that is four months after the

<sup>&</sup>lt;sup>1</sup> PALM records indicate that the issue fee was paid on January 31, 2011.

date on which the Board of Patent Appeals and Interferences Decision was mailed), to March 31, 2008. See 37 C.F.R. §§ 1.702(a)(5)."

Applicant's argument is persuasive. 37 CFR 1.703(a)(5) provides for a period of adjustment of patent term due to examination delay. The period of adjustment under § 1.702(a) is the sum of the following periods:

(5) The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

As the Office failed to take action within the time provided for in 37 CFR 1.702(a)(5), an adjustment to the Patent Term Adjustment should have been made in the amount of 368 days for the period November 29, 2006 to March 31, 2008.

Finally, applicant disputes the reduction of 35 days for the submission of a supplemental Appeal Brief on January 21, 2005, subsequent to filing a Notice of Appeal on February 17, 2004 and argues that "the delay appears to have been calculated as a reduction to the period of adjustment due to a failure to respond to a non-final Office Action mailed September 17, 2004. However, Applicants believe the filing of the supplemental Appeal Brief subsequent to the Office's issuance of the non-final Office Action, does not constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as intended in 37 C.F.R. § 1.704(b), and as such, Applicant respectfully requests the Applicant Delay be decreased from 35 days to 0 days. See 37 C.F.R. § 1.704(b)."

Applicant's arguments have been considered, but not found to be persuasive.

Rule 1.704(b) sets forth, in pertinent part:

an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

As the non-Final Office Action reopened prosecution and indicated that an appeal brief could reinstate the appeal, the failure to file a response thereof, due within three months of the mail date of the Office Action, is a failure to engage.

Thus the patent term adjustment at the time the Notice of Allowance was mailed was 1558 days (764 "A delay" days + 1017 "C delay" days - 193 Applicant delay days), not 1623 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE THOUSAND FIVE HUNDRED FIFTY-EIGHT (1558) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned Patitions Attorney at (571) 272,3212.

Patricia Faison-Ball Senior Petitions Attorney

Office of Petitions

Enclosure: Copy of Revised PALM Screen



PTA/PTE Information

Patent <u>T</u>erm Adjustment

Patent Term Extension

Application Number\*: 09797754

Search Explanation of PTA Calculation

 $\Box$ 

**Explanation of PTE Calculation** 

#### PTA Calculations for Application: 09797754

1	·	
	Application Filing Date 03/02/2001	OverLapping Days Between (A and B) or (A and C) 0
	Issue Date of Patent	Non-Overlapping USPTO Delays: 1414
28	A Delays 396	PTO Manual Adjustment 367
5.8	B Delays 0	Applicant Delay (APPL) 193
	C Delays 1018	Total PTA (days) 1588

#### \* - Sorted Column

3

#### **File Contents History**

Action Action Code Duration Duration PTO APPL Action Action Recorded Action Due Number Date Date **Parent** Description Number 131 07/13/2011 P028 Adjustment of PTA Calculation by PTO 130 07/13/2011 P028 Adjustment of PTA Calculation by PTO 1017 Adjustment of PTA Calculation by PTO 07/13/2011 129 P028 09/12/2010 MN/= 10/29/2010 Mail Notice of Allowance <u>47</u> 105 0 117 10/26/2010 N/=. Notice of Allowance Data Verification Completed 116 10/26/2010 IREV **Issue Revision Completed** n 115 10/26/2010 DVER **Document Verification** 112 10/25/2010 CNTA **Allowability Notice** 0 109 08/23/2010 **FWDX** Date Forwarded to Examiner 0 108 08/23/2010 MAPCR Mail Appeals conf. Reopen Prosec. Pre-Appeals Conference Decision - Reopen Prosecution 107 08/20/2010 APCR 0 106 05/12/2010 AP.C Request for Pre-Appeal Conference Filed 04/12/2010 N/AP <u>30</u> 05/12/2010 Notice of Appeal Filed 105 104 XT/G Request for Extension of Time - Granted 0 0 103 01/12/2010 **ELC RVW Electronic Review** EML\_NTF Email Notification 01/12/2010 102 101 12/05/2009 MCTFR Mail Final Rejection (PTOL - 326) <u>38</u> 98 100 10/26/2009 CTFR **Final Rejection** 08/12/2009 FWDX Date Forwarded to Examiner 99 Response after Non-Final Action 97 96 05/05/2009 FLC RVW Flectronic Review 05/05/2009 EML\_NTF Email Notification 95 94 92 91 90 87 05/05/2009 Mail Non-Final Rejection 04/30/2009 CTNE Non-Final Rejection 04/14/2009 EML\_NTR Email Notification 04/14/2009 Change in Power of Attorney (May Include Associate POA) 04/07/2009 C.AD Correspondence Address Change FWDX Date Forwarded to Examiner 04/06/2009 85 83 04/06/2009 FWDX 04/06/2009 ABN9 Disposal for a RCE / CPA / R129 93 89 Information Disclosure Statement considered 04/03/2009 IDSC 04/03/2009 RCAP Reference capture on IDS 88 86 84 82 04/03/2009 M844 Information Disclosure Statement (IDS) Filed Amendment Submitted/Entered with Filing of CPA/RCE 04/03/2009 AMSB 04/03/2009 03/05/2009 RCEX Request for Continued Examination (RCE) <u> 29</u> 04/03/2009 XT/G Request for Extension of Time - Granted Information Disclosure Statement (IDS) Filed 04/03/2009 WIDS 04/03/2009 Workflow - Request for RCE - Begin 80 BRCE 79 03/31/2009 DOCK Case Docketed to Examiner in GAU 0 78 77 76 12/05/2008 MCTFR Mail Final Rejection (PTOL - 326) 12/04/2008 CTFR **Final Rejection** 11/20/2008 C.ADB Correspondence Address Change 0 75 74 73 10/07/2008 C.ADB Correspondence Address Change 10/07/2008 **FWDX** Date Forwarded to Examiner 09/30/2008 Response after Non-Final Action 70 72 71 70 09/30/2008 XT/G Request for Extension of Time - Granted Case Docketed to Examiner in GAU 08/20/2008 DOCK 03/31/2008 MCTNE Mail Non-Final Rejection 0 69 68 67 03/28/2008 CTNF Non-Final Rejection 1018 Mail BPAI Decision on Appeal - Reversed 11/30/2006 02/17/2004 MAPDR BPAI Decision - Examiner Reversed 11/29/2006 APDR Docketing Notice Mailed to Appellant 07/14/2006 AP\_DK\_M 65 64 07/14/2006 APAS Assignment of Appeal Number Appeal Awaiting BPAI Docketing APWD 06/28/2006

								1
- [-	63	05/24/2006		MRBNE	Mail Reply Brief Noted by Examiner			0
- [	62	05/19/2006		RBNE	Reply Brief Noted by Examiner			٥
- 1	61	05/04/2006		FWDX	Date Forwarded to Examiner			0
	60	04/19/2006		APRB	Reply Brief Filed			0
Į.	59	02/13/2006		MAPE2	Mail Supplemental Examiner's Answer	•		0
	58	02/06/2006		APE2	2nd or Subsequent Examiner's Answer to Appeal Brief			0
	51	10/19/2005		APWD	Appeal Awaiting BPAI Docketing			0
ŀ	50	10/06/2005		DOCK	Case Docketed to Examiner in GAU			0
- 1	49	08/11/2005		MRBNE	Mail Reply Brief Noted by Examiner			0
	48	08/09/2005		RBNE	Reply Brief Noted by Examiner			0
- 1	47	08/05/2005		FWDX	Date Forwarded to Examiner			0
	46	08/01/2005		APRB	Reply Brief Filed			0
-	45	05/27/2005	05/21/2005	MAPEA	Mail Examiner's Answer	<u>6</u>		34
- 1	44	05/25/2005		APEA	Examiner's Answer to Appeal Brief			0
- 1	43	04/19/2005		MM327	Mail Miscellaneous Communication to Applicant			0
	42	04/18/2005		M327	Miscellaneous Communication to Applicant - No Action Count			0
-	41	03/29/2005		FWDX	Date Forwarded to Examiner			0
-	39	03/29/2005		FWDX	Date Forwarded to Examiner			0
	36	02/24/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
- [	34	01/21/2005	12/17/2004	A	Response after Non-Final Action		<u>35</u>	27
ı	33	01/21/2005		XT/G	Request for Extension of Time - Granted			0
-	29	11/11/2004		C.ADB	Correspondence Address Change			0
- 1	28	10/06/2004		DOCK	Case Docketed to Examiner in GAU			0
- 1	27	09/17/2004		MCTNF	Mail Non-Final Rejection			0
- 1	26	09/16/2004		CTNF	Non-Final Rejection			0
- 1	25	08/25/2004		FWDX	Date Forwarded to Examiner			0
- 1	38	07/22/2004		AP.B	Appeal Brief Filed			0
- 1		07/22/2004		AP.B	Appeal Brief Filed			0
- ` I		07/22/2004		XT/G	Request for Extension of Time - Granted			0
١		03/22/2004	•	C.AD	Correspondence Address Change			0
	21	03/01/2004		MCTAV	Mail Advisory Action (PTOL - 303)			0
- 1		02/27/2004		CTAV	Advisory Action (PTOL-303)			0
- 1		02/17/2004		N/AP	Notice of Appeal Filed			0
- 1		02/13/2004		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
		02/11/2004		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
	37	02/07/2004		N/AP	Notice of Appeal Filed			0
		01/21/2004		SAPB	Supplemental Appeal Brief			0
		12/04/2003		MCTFR	Mail Final Rejection (PTOL - 326)			0
	15	12/02/2003		CTFR	Final Rejection			0
	14	11/14/2003		FWDX	Date Forwarded to Examiner			0
		11/03/2003	10/29/2003	A	Response after Non-Final Action		5	12
		10/28/2003	· -	C614	New or Additional Drawing Filed			0
- 1		07/29/2003		MCTNF	Mail Non-Final Rejection			0
- 1		07/24/2003		CTNF	Non-Final Rejection			0
- 1		06/11/2003		FWDX	Date Forwarded to Examiner			0
- 1		06/05/2003		C614	New or Additional Drawing Filed			0
- 1		06/05/2003	06/03/2003		Response after Non-Final Action		<u>2</u>	8
- 1		03/03/2003	05/02/2002		Mail Non-Final Rejection	305		-1
- 1	_	02/27/2003		CTNF	Non-Final Rejection	_		0
- 1	6	12/20/2002		DOCK	Case Docketed to Examiner in GAU			0
- 1		04/11/2002		DOCK	Case Docketed to Examiner in GAU			0
- 1		04/12/2001			Application Dispatched from OIPE			0
- 1		04/06/2001		C.AD	Correspondence Address Change			0
- 1	-	03/23/2001		SCAN	IFW Scan & PACR Auto Security Review			0
	1	03/02/2001			Initial Exam Team nn			0

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FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS MN 55440-1022

MAILED

OCT 13 2011

OFFICE OF PETITIONS

In re Patent No. 8,001,118 Issued: August 16, 2011

Application No. 09/797,754

Filed: March 2, 2001

Attorney Docket No. 16113-1577001

: DECISION ON APPLICATION

: FOR PATENT TERM ADJUSTMENT

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT" filed September 15, 2011. Patentees request adjustment for the period of time from December 18, 2004, to January 21, 2005, a period of 35 days pursuant to 37 CFR 1.704(b). Since the request is treated after issuance, the request is being treated under 37 CFR 1.705(d).

The application for patent term adjustment patent is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

On August 16, 2011, the above-identified application matured into U.S. Patent No. 8,001,118 with a revised patent term adjustment of 2282 days. Prior to issuance, patentees timely submitted an application for patent term adjustment (with required fee), under 37 CFR 1.705(b), asserting many arguments including the dispute at issue, that the reduction of 35 days for the submission of a supplemental Appeal Brief on January 21, 2005, subsequent to filing a Notice of Appeal on February 17, 2004 and argues that "the delay appears to have been calculated as a reduction to the period of adjustment due to a failure to respond to a non-final Office Action mailed September 17, 2004. However, Applicants believe the filing of the supplemental Appeal Brief subsequent to the Office's issuance of the non-final Office Action, does not constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as intended in 37 C.F.R. § 1.704(b), and as such, Applicant respectfully requests the Applicant Delay be decreased from 35 days to 0 days. See 37 C.F.R. § 1.704(b)." at the correct number of days of Patent Term Adjustment is 617 days.

Patentees argument was considered but not found persuasive and thus the petition was granted to the extent indicated in a decision mailed July 15, 2011.

Patentees renew their argument that the supplemental Appeal Brief filed on January 21, 2005, should not be considered a failure to engage in reasonable efforts pursuant to 37 C.F.R. § 1.704(b) and that he PTO should not consider the period of time beginning with the mailing of the non-final Office Action, and ending with the filing of the supplemental Appeal Brief, as "re-opening prosecution," as that period of time was spent under appeal.

Rule 1.704(b) sets forth, in pertinent part:

an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Patentees are advised that the application was not under appeal during the period September 17, 2004 to January 21, 2004. As noted in the non-Final Office Action mailed September 17, 2004, "Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn". In view thereof, the failure to file a response thereof, due within three months of the mail date of the Office Action, is a failure to engage pursuant to 37 C.F.R. § 1.704(b).

The reduction of thirty-five (35) days for applicant delay is appropriate and thus, the patent term adjustment of 2282 days, as indicated in the patent, is properly reflected.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball Senior Petitions Attorney

Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO	ACCEPT UNIN	TENTIONALI EXPIRED P			AYMENT OF MAINTENANCE FEE IN AN R 1.378(c))		
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing I	Date ′-MM-DD)	Docket Number (if applicable)		
6505379	2003-01-14	09797917	2001-0	3-01			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY  Repart of the patent number and (2) the application number and (2) the application number and (3) the application number and (4) the patent number and (4) the application number and (5) the application number and (6) the application number and (7) the patent number and (8) the application number and (9) the application number and (1) the application number and (1) the patent number and (1) the application number and (1) the patent number and (1) the application number and (1) the application number and (2) the application number and (3) the application number and (4) the application number and (5) the application number and (6) the application number and (7) the application number and (8) the application number and (1) the application number and (2) the application number and (1) the application number and (2) the application number and (3) the application number and (1) the application number and (2) the application number and (3) the application number and (4) the application numb							
	LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS  Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)						
NOT Small Entity			Small E	Entity			
Fee 3 ½ year	Code (1551)			Fee 3 ½ year	Code (2551)		
7 ½ year	(1552)		•	7 ½ year	(2552)		
	r (1553)		0	11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) mus	t be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petitio	n.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMEN <sup>-</sup>	T OF THE M	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF T	HE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	FORY OR	SIGNATOR	RIES		
	states: "Any petition und fice, or by the patented				ttorney or agent registered to practice before the Patent t."		
I certify, in accorda	ance with 37 CFR 1.4(d	l)(4) that I am					
An attorney	or agent registered to	oractice before the	e Patent a	and Tradema	ark Office		
<ul><li>A sole pater</li></ul>	ntee						
A joint pater	ntee; I certify that I am	authorized to sign	this subn	nission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are si	gning this e-petition	on				
○ The assigne	ee of record of the entir	e interest					

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Sole Patentee						
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.					
Signature / Kris D. Keller / Date (YYYY-MM-DD) 2011-03-15						
Name	Kris D. Keller					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



### UNITED STATES PATENT AND TRADEMARK OFFICE

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6505379

Issue Date:

January 14,2003

Application No. 09797917

Filed:

March 1,2001

:UNDER 37 CFR 1.378(c)

Attorney Docket No. KE26-004

March 15,2011

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 15,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



#### UNITED STATES PATENT AND TRADEMARK OFFICE

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PATENT, COPYRIGHT & TRADEMARK LAW GROUP

4199 Kinross Lakes Parkway

Suite 275

MAILED

AUG 0 1 2011

OFFICE OF PETITIONS

In re Patent No. 6,412,867

Issue Date: July 2, 2002

RICHFIELD, OH 44286

Application No. 09/798,533

Filed: March 1, 2001 Attorney Docket No. 621

Patentee(s): Odessa Robinson

DECISION ON PETITION

UNDER 37 CFR 1.378(b)

This is a decision on the petition under 37 CFR 1.378(b), filed June 6, 2011, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent.

# The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued July 2, 2002. The second maintenance fee could have been paid from July 2, 2009, through January 4, 2010, or with a surcharge during the period from January 5, 2010 through July 2, 2010. Accordingly, the patent expired at midnight July 2, 2010, for failure to timely submit the 7 ½ year maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks item (1) above.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

Petitioner states that the delay in payment of the second maintenance fee was unavoidable due to financial difficulties at the time in question.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses the identical language, i.e. "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)). Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPO 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, petitioner must show that she was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due to her financial condition until the petition was filed.

In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were emplaced by petitioner or anyone else. In the absence of a showing that petitioner or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra. Put otherwise, the issues of petitioner's financial problems are immaterial in the absence of a showing that these, and not the lack of any steps in place to pay the fee, caused or contributed to the delay.

A showing of unavoidable delay based upon financial condition must establish that the financial condition of the petitioner during the entire period of the delay was such as to excuse the delay. See Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). The showing of record does not adequately establish that petitioner's entire delay in paying the second maintenance fee from July 2, 2009, until the petition was filed on or about June 6, 2011, was unavoidable within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).

A complete showing, with supporting documentation, is required of the financial condition of petitioner or the party responsible for payment of the maintenance fees. Such showing should include all income, expenses, assets, credit, and obligations, which made the delay in payment of the maintenance fee from July 2, 2009, until the filing of the petition on or about June 6, 2011, "unavoidable." A monthly breakdown is preferred. In essence, petitioner must show that she was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was financially unable to make the payment until the petition was filed. The showing should include documentary proof of the maintenance fee tracking system, the entry of this patent in that system and an explanation of how the system worked.

Petitioner should also note that since the maintenance fee was proffered within 24 months of the date of expiration date of the patent, she has an alternate remedy under the unintentional provisions of 37 CFR 1.378(c) which does not require a showing of the delay in timely paying the maintenance fee in order to reinstate the patent. The \$700 already submitted would be applied to the \$1,640 fee owed under 37 CFR 1.378(c), leaving a balance due of \$940.

Lastly, it is noted that the file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Petitioner is advised that the mere filing of a power of attorney and/or a change of correspondence address will not affect the fee address. Therefore, if petitioner desires to receive future correspondence regarding any Maintenance Fee Reminder which <u>may</u> be mailed regarding maintenance fees for the above-identified patent, a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) must also be submitted.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS

Commissioner for Patents
Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By internet:

EFS-Web<sup>1</sup>

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

cc:

MS. ODESSA ROBINSON

7206 KEDRON ST

PITTSBURGH, PA 15208

<sup>&</sup>lt;sup>1</sup> www.uspto.gov/ebc/efs\_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No. 11

KENYON & KENYON LLP ONE BROADWAY NEW YORK NY 10004

**MAILED** 

JAN 12 2011

OFFICE OF PETITIONS

In re Patent No. 6,589,375

Issue Date: July 8, 2003

Application No. 09/798,547

Filed: March 2, 2001

Attorney Docket No. 43519.131

**DECISION ON PETITION** 

This is a decision is in response to the petition under 37 CFR 1.378(b), filed on August 19, 2010, to accept the delayed payment of the maintenance fee for the above-identified patent.

## The petition is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below because the Director will not undertaken any further reconsideration or review of the matter after a decision on the petition for reconsideration.

The patent issued on July 8, 2003. The maintenance fee could have been paid during the period from Monday, July 9, 2006 through January 8, 2007 or with a surcharge during the period from January 9, 2007 through Monday, July 9, 2007. Accordingly, this patent expired on July 9, 2007, for failure to timely remit the maintenance fee.

Petitioners stated that they were informed in a letter from Kenyon & Kenyon LLP dated January 18, 2006, patentee's outside counsel, that Kenyon would cease handling the monitoring and payment of the maintenance fees for patentee's patents. Petitioners indicated that Computer Patent Annuities (hereinafter "CPA") indicated in a letter to patentee dated May 12, 2006, that CPA would assume

Patent No. 6,589,375 Application No. 09/798,547

responsibility for monitoring and payment of the maintenance fee for patentee's patents starting on June 1, 2006. Petitioners stated that the letter indicated that next correspondence from CPA to patentee would be in the form of a renewal notice when the first maintenance fee for one of the patents became due. Petitioners asserted that it was their understanding that all correspondence from CPA would be directed to Daniel V. Haun, VP Engineering and Research of Nammo Talley Inc. (patentee). Petitioners contended that they were unaware of receiving any further correspondence from CPA until an email exchange between Ms. Sallie Winkler, a Service Account Manager for CPA, and Mr. Haun on December 1, 2008. The emails concerned the change of status from a small entity to a large entity, but not regarding payment of the maintenance fee. Petitioners asserted that they were not aware of any missed maintenance fee payments or expiration of any patents until they received a letter from Kenyon & Kenyon on June 29, 2010, accompanied by a copy of the Notice of Patent Expiration.

A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include the following:

- (1) the required maintenance fee set forth in § 1.20(e) through (g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

This petition lacks requirement (3).

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133. This is a very stringent standard. Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word unavoidable'... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present. In re

Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Patent No. 6,589,375 Application No. 09/798,547 Page 3

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In determining whether the delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray v. Lehman, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995). The patent owner at the time of the expiration of the patent is ultimately the person responsible to ensure the timely payment of the maintenance fees. The patent owner may engage another to track and/or pay the maintenance fees; however, merely engaging another does not relieve the patent owner from his or her obligation to take appropriate steps to ensure the timely payment of such maintenance fees. Additionally, a patentee's lack of knowledge of the need to pay the maintenance fee does not constitute unavoidable delay. See In re Patent No. 4,409,763, 7 USPQ2d 1798 (Comm'r Pat. 1988), aff'd Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990); aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir. 1991), cert. denied, 60 U.S.L.W. 3520 (January 27, 1992).

Assuming, *arguendo*, that petitioners were justified in relying on CPA to pay the maintenance fee, such reliance *per se* does not provide petitioner with a showing of unavoidable delay within the meaning of 37 CFR 1.378(b) and 35 U.S.C. § 41(c). California Medical Products v. Technol. Med. Prod., 921 F.Supp. 1219, 1259 (D. Del. 1995). Rather, such reliance merely shifts the focus of the inquiry from petitioners to whether CPA acted reasonably and prudently. Nevertheless, petitioners are bound by any errors that may have been committed by CPA. Petitioners are reminded that the United States Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the petitioners, and petitioners are bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962). Specifically, petitioners' delay caused by the mistakes or negligence of their voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. § 133. Haines v. Quigg, 673 F. Supp. at 317; Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978).

The record does not show that petitioners monitored the performance of CPA pursuant to petitioners' belief that CPA would pay the maintenance fee. Further, petitioners failed to demonstrate that they diligently inquired with CPA or the USPTO into the status of the patent and maintenance fee payment. Petitioners' inaction does not reflect the due care and diligence exercised by a prudent and careful person with respect to his or her most important business, and as such, does not demonstrate unavoidable delay. Rather, a prudent person would have taken actions to ensure that the services of CPA were timely performed as specified.

Additionally, petitioners did not provide any statements from persons from CPA, who have first-hand knowledge of the details, regarding the circumstances of the delay in payment of the maintenance fee. There is no explanation by CPA as to why the renewal notice was not sent to Mr. Haun. Furthermore, petitioners did not submit records from CPA showing that the maintenance fee due date was entered into a docketing system and that they were tracking the maintenance fee. Any request for

reconsideration should be accompanied by copies of correspondence between CPA and petitioner regarding which party bore the obligation for tracking and paying the maintenance fee. If petitioners can show, by supporting documentation that CPA assumed the obligation, then petitioners must demonstrate that CPA entered the patent in a reliable system for monitoring maintenance fee payments. Petitioners should submit statements from CPA fully explaining the tracking system, the identity and qualifications of any support staff that managed the system and the checks in place to ensure that the maintenance fee was timely paid. Additionally, petitioners should show that it diligently inquired with CPA as to the status of the patent and when the maintenance was due. Lastly, petitioners must provide a thorough explanation by persons with firsthand knowledge of the events, as well as any documentary evidence, as to errors or events that occurred, which prevented the timely payment of the maintenance fee.

In summary, the showing of record is inadequate to establish unavoidable delay. As petitioners have not shown that it exercised the standard of care observed by a reasonable person in the conduct of its most important business, the petition is **dismissed**.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for seeking further reconsideration is not refundable. Any request for refund should be in writing to the following address:

Mail Stop 16 Director of the US Patent and Trademark Office PO Box 1450 Alexandria, VA 22313-1450

A copy of this decision should accompany petitioners' request.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Services Window

Randolph Building 401 Dulany Street Alexandria, VA 22314 Patent No. 6,589,375 Application No. 09/798,547 Page 5

Telephone inquiries should be directed to the undersigned at 571-272-3211.

Christina Tartera Donnell Senior Petitions Attorney

Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No. 12

KENYON & KENYON LLP ONE BROADWAY NEW YORK NY 10004

MAILED JAN 12 2011

OFFICE OF PETITIONS

In re Patent No. 6,605,233

Issue Date: August 12, 2003

Application No. 09/798,640

Filed: March 2, 2001

Attorney Docket No. 43519.012200

**DECISION ON PETITION** 

This is a decision is in response to the petition under 37 CFR 1.378(b), filed on August 19, 2010, to accept the delayed payment of the maintenance fee for the above-identified patent.

#### The petition is **dismissed**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below because the Director will not undertaken any further reconsideration or review of the matter after a decision on the petition for reconsideration.

The patent issued on August 12, 2003. The maintenance fee could have been paid during the period from Monday, August 14, 2006 through February 12, 2007 or with a surcharge during the period from February 13, 2007 through Monday, August 13, 2007. Accordingly, this patent expired on August 13, 2007, for failure to timely remit the maintenance fee.

Petitioners stated that they were informed in a letter from Kenyon & Kenyon LLP dated January 18, 2006, patentee's outside counsel, that Kenyon would cease handling the monitoring and payment of the maintenance fees for patentee's patents. Petitioners indicated that Computer Patent Annuities (hereinafter "CPA") indicated in a letter to patentee dated May 12, 2006, that CPA would assume

Patent No. 6,605,233 Application No. 09/798,640

responsibility for monitoring and payment of the maintenance fee for patentee's patents starting on June 1, 2006. Petitioners stated that the letter indicated that next correspondence from CPA to patentee would be in the form of a renewal notice when the first maintenance fee for one of the patents became due. Petitioners asserted that it was their understanding that all correspondence from CPA would be directed to Daniel V. Haun, VP Engineering and Research of Nammo Talley Inc. (patentee). Petitioners contended that they were unaware of receiving any further correspondence from CPA until an email exchange between Ms. Sallie Winkler, a Service Account Manager for CPA, and Mr. Haun on December 1, 2008. The emails concerned the change of status from a small entity to a large entity, but not regarding payment of the maintenance fee. Petitioners asserted that they were not aware of any missed maintenance fee payments or expiration of any patents until they received a letter from Kenyon & Kenyon on June 29, 2010, accompanied by a copy of the Notice of Patent Expiration.

A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include the following:

- (1) the required maintenance fee set forth in § 1.20(e) through (g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

This petition lacks requirement (3).

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Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Patent No. 6,605,233 Application No. 09/798,640 Page 3

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

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Assuming, *arguendo*, that petitioners were justified in relying on CPA to pay the maintenance fee, such reliance *per se* does not provide petitioner with a showing of unavoidable delay within the meaning of 37 CFR 1.378(b) and 35 U.S.C. § 41(c). California Medical Products v. Technol. Med. Prod., 921 F.Supp. 1219, 1259 (D. Del. 1995). Rather, such reliance merely shifts the focus of the inquiry from petitioners to whether CPA acted reasonably and prudently. Nevertheless, petitioners are bound by any errors that may have been committed by CPA. Petitioners are reminded that the United States Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the petitioners, and petitioners are bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962). Specifically, petitioners' delay caused by the mistakes or negligence of their voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. § 133. Haines v. Quigg, 673 F. Supp. at 317; Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978).

The record does not show that petitioners monitored the performance of CPA pursuant to petitioners' belief that CPA would pay the maintenance fee. Further, petitioners failed to demonstrate that they diligently inquired with CPA or the USPTO into the status of the patent and maintenance fee payment. Petitioners' inaction does not reflect the due care and diligence exercised by a prudent and careful person with respect to his or her most important business, and as such, does not demonstrate unavoidable delay. Rather, a prudent person would have taken actions to ensure that the services of CPA were timely performed as specified.

Additionally, petitioners did not provide any statements from persons from CPA, who have first-hand knowledge of the details, regarding the circumstances of the delay in payment of the maintenance fee. There is no explanation by CPA as to why the renewal notice was not sent to Mr. Haun. Furthermore, petitioners did not submit records from CPA showing that the maintenance fee due date was entered into a docketing system and that they were tracking the maintenance fee. Any request for

reconsideration should be accompanied by copies of correspondence between CPA and petitioner regarding which party bore the obligation for tracking and paying the maintenance fee. If petitioners can show, by supporting documentation that CPA assumed the obligation, then petitioners must demonstrate that CPA entered the patent in a reliable system for monitoring maintenance fee payments. Petitioners should submit statements from CPA fully explaining the tracking system, the identity and qualifications of any support staff that managed the system and the checks in place to ensure that the maintenance fee was timely paid. Additionally, petitioners should show that it diligently inquired with CPA as to the status of the patent and when the maintenance was due. Lastly, petitioners must provide a thorough explanation by persons with firsthand knowledge of the events, as well as any documentary evidence, as to errors or events that occurred, which prevented the timely payment of the maintenance fee.

In summary, the showing of record is inadequate to establish unavoidable delay. As petitioners have not shown that it exercised the standard of care observed by a reasonable person in the conduct of its most important business, the petition is <u>dismissed</u>.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for seeking further reconsideration is not refundable. Any request for refund should be in writing to the following address:

Mail Stop 16 Director of the US Patent and Trademark Office PO Box 1450 Alexandria, VA 22313-1450

A copy of this decision should accompany petitioners' request.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

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P.O. Box 1450

Alexandria, VA 22313-1450

By FAX:

(571) 273-8300

Attn: Office of Petitions

By hand:

Customer Services Window

Randolph Building 401 Dulany Street Alexandria, VA 22314 Patent No. 6,605,233 Application No. 09/798,640 Page 5

Telephone inquiries should be directed to the undersigned at 571-272-3211.

Christina P. Donnell
Christina Tartera Donnell

Senior Petitions Attorney Office of Petitions



### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7304775

Issue Date:

December 4,2007

Application No. 09798746

Filed:

This is a decision on the electronic petition, filed

March 2,2001

Attorney Docket No. 16139-014001US

to accept the unintentionally delayed payment of the

February 10,2012 3.5

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 10,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature /Ido Rabinovitch/ Date (YYYY-MM-DD)						
Name	Ido Rabinovitch	Registration Number	68434			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

PATENT DEPARTMENT (51851)
KILPATRICK TOWNSEND & STOCKTON LLP
1001 WEST FOURTH STREET
WINSTON-SALEM NC 27101

MAILED
MAY 1 9 2011

OFFICE OF PETITIONS

In re Application of Kenneth M. Martin et al. Application No. 09/798,872 Filed: July 12, 2002

Attorney Docket No. 5150-60100

: DECISION ON APPLICATION :FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION" filed February 14, 2011. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from 131 days to 0 days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

On November 16, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 131 days. The instant application for patent term adjustment was timely filed<sup>1</sup>.

Applicants disclose that they believe the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated. Applicants state that it appears that the PTA Calculations in PAIR incorrectly reflects the date of receipt of the response to the non-Final Office Action mailed March 31, 2010 as March 31, 2004 instead of June 29, 2004. In view thereof, applicants aver that the PTA Calculations in PAIR incorrectly show a 118 day adjustment for USPTO delay pursuant to 37 CFR 1.702(a)(2) due to inaction by the PTO 4 months after the June 29, 2004 response to office action filed by Applicant.

A review of the application history reveals that applicants are correct. The Office incorrectly entered the date of receipt of the response to the non-Final Office Action in

PALM records indicate that the Issue Fee was also received on February 14, 2011.

the PTA Calculations as March 31, 2004 instead of June 29, 2004.<sup>2</sup> Thus, the date of June 29, 2004, not March 31, 2004, should have been used for the purpose of calculating patent term adjustment.

As a Final Office Action was mailed November 26, 2004, four months and twenty-eight (28) days after the response filed June 29, 2004, a period of reduction of 28 days, pursuant to 37 CFR 1.702(a)(2) should have been entered. The period of 118 days delay is being removed.

Applicant argues further that the calculation of PTA does not include a reduction in PTA for the period of 46 days running from the filing of a non-compliant appeal brief on September 11, 2006 and the filing of a corrected appeal brief on October 27, 2006 and thus that 46 days applicant delay should have been entered in accordance with 35 USC 154(b)(2)(C)(ii) and 37 CFR 1.704(b)<sup>3</sup>.

Applicant is advised that the filing of an appeal brief is not a reply within the meaning of the rule and as such, the correction of an appeal brief is not a failure to engage.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **41days** (195 days of Office delay – 154 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

<sup>&</sup>lt;sup>2</sup> It is noted that the Image File Wrapper for the instant application indicates the date of receipt of the response to the non-Final Office Action was June 29, 2004.

<sup>&</sup>lt;sup>3</sup>37 CFR 1.704(b) provides that:

With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 27/2-3212.

Patricia Faison-Ball Senior Petitions Attorney Office of Petitions

Enclosure: Copy of Revised PALM Screen



# Patent Term

# Adjustments

PTA/PTE Information Patent <u>T</u>erm Adjustment

Patent Term Extension

Application Number\*: 09798872

Search Explanation of PTA Calculation

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**Explanation of PTE Calculation** 

### PTA Calculations for Application: 09798872

5		· · · · · · · · · · · · · · · · · · ·	;
	Application Filing Date 03/01/2001	OverLapping Days Between (A and B) or (A and C) 0	
	Issue Date of Patent	Non-Overlapping USPTO Delays: 285	
Į	A Delays 285	PTO Manual Adjustment -90	****
•	B Delays 0	Applicant Delay (APPL) <sub>154</sub>	•
	C Delays ∩	Total PTA (days)(4)	

#### \* - Sorted Column

#### File Contents History

Action Action Recorded Action Due Number Date Date Duration Duration PTO APPL Parent Action Number Action Code Description 112 05/16/2011 P028 05/16/2011 111 P028 Adjustment of PTA Calculation by PTO 118 101 11/16/2010 MN/=. Mail Notice of Allowance 100 11/16/2010 IREV Issue Revision Completed 99 11/16/2010 N/=. Notice of Allowance Data Verification Completed 11/16/2010 DOCK Case Docketed to Examiner in GAU 97 11/16/2010 DVER Document Verification 96 11/15/2010 EX.A Examiner's Amendment Communication 95 11/15/2010 CNTA Allowability Notice 11/08/2010 INH 88 87 11/08/2010 DOCK Case Docketed to Examiner in GAU 09/29/2010 MAPDA Mail BPAI Decision on Appeal - Affirmed 09/28/2010 APDA **BPAI Decision - Examiner Affirmed** case Inherited 85 82 02/17/2010 INHY 03/02/2009 AP DK Docketing Notice Mailed to Appellant 02/27/2009 APAS **Assignment of Appeal Number** 80 02/18/2009 MM327 Mail Miscellaneous Communication to Applicant 79 02/17/2009 M327 Miscellaneous Communication to Applicant - No Action Count 02/14/2009 DOCK Case Docketed to Examiner in GAU 77 07/29/2008 APWD Appeal Awaiting BPAI Docketing 76 03/31/2008 DOCK Case Docketed to Examiner in GAU 03/20/2007 MRBNE Mail Reply Brief Noted by Examiner 73 03/19/2007 RBNE Reply Brief Noted by Examiner 72 03/08/2007 MRBNE Mail Reply Brief Noted by Examine 03/05/2007 RBNE Reply Brief Noted by Examiner 03/01/2007 FWDX 68 02/20/2007 APRB Reply Brief Filed 02/13/2007 TCRD Return of Undocketed appeal to the TC 02/13/2007 PACC Exam. Ans. Review Complete 65 12/20/2006 MAPEÁ Mail Examiner's Answer 12/18/2006 APEA Examiner's Answer to Appeal Brief 11/08/2006 APBR Appeal Brief Review Complete 62 11/08/2006 FWDX Date Forwarded to Examiner 61 10/27/2006 AP.B Appeal Brief Filed 09/27/2006 APBD Notice -- Defective Appeal Brief 59 09/26/2006 APBR Appeal Brief Review Complete 0 58 09/26/2006 **FWDX** Date Forwarded to Examiner 0 57.1 09/11/2006 APBI Defective / Incomplete Appeal Brief Filed 57 09/11/2006 AP.R Appeal Brief Filed 0 56 07/10/2006 06/08/2006 N/AP Notice of Appeal Filed 32 53 55 07/10/2006 Request for Extension of Time - Granted XT/G 54 03/21/2006 Case Docketed to Examiner in GAU 0 53 03/08/2006 MCTFR Mail Final Rejection (PTOL - 326) 0 52 03/06/2006 CTFR **Final Rejection** 12/20/2005 0 50 12/08/2005 Α... Response after Non-Final Action 0 12/08/2005 49 C614 New or Additional Drawing Filed 09/08/2005 Mail Non-Final Rejection 47 09/06/2005 CTNF Non-Final Rejection 0 46 06/04/2005 **FWDX** Date Forwarded to Examiner 05/31/2005 Appeal Brief Filed 44 43 03/28/2005 02/26/2005 N/AP Notice of Appeal Filed 42 03/28/2005 XT/G Request for Extension of Time - Granted 11/26/2004 07/31/2004 MCTFR Mail Final Rejection (PTOL - 326) 118

41	11/26/2004		CTFR	Final Rejection			
39	09/26/2004		FWDX	Date Forwarded to Examiner			ŏ
36	09/26/2004			IFW TSS Processing by Tech Center Complete			ŏ l
35	06/29/2004		WAMD	Workflow incoming amendment IFW			ŏ l
38	03/31/2004		A	Response after Non-Final Action			ō
34	03/31/2004	03/12/2004		Mail Non-Final Rejection	19		30
33	03/30/2004	00, 11, 1001	CTNF	Non-Final Rejection	**		0
31	12/19/2003		FWDX	Date Forwarded to Examiner			ŏ
32	12/09/2003		LET.	Miscellaneous Incoming Letter			o l
30	11/12/2003		AP.B	Appeal Brief Filed			o l
27	09/18/2003		LET.	Miscellaneous Incoming Letter			0
26	09/15/2003		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			i l
29	09/12/2003	06/12/2003		Notice of Appeal Filed			22
28	09/12/2003	00/12/2003	XT/G	Request for Extension of Time - Granted		<u>92</u>	0 .
25	09/11/2003		EXIN	*			Ö
24	06/23/2003		M865	Examiner Interview Summary Record (PTOL - 413)			· I
23.7	04/25/2003		M844	Letter Requesting Interview with Examiner			· ·
23.7	04/25/2003			Information Disclosure Statement (IDS) Filed			- 1
22			WIDS MCTFR	Information Disclosure Statement (IDS) Filed			0
21	03/12/2003		CTFR	Mail Final Rejection (PTOL - 326)			ů l
20	03/08/2003			Final Rejection			-
19	01/07/2003		C.AD	Correspondence Address Change			0
1	01/07/2003		PA	Change in Power of Attorney (May Include Associate POA)			0
17	01/07/2003		FWDX	Date Forwarded to Examiner			0
40	12/23/2002		RCAP	Reference capture on IDS			0
18.7	12/23/2002	12/23/2002		Information Disclosure Statement (IDS) Filed			16
18	12/23/2002		WIDS	Information Disclosure Statement (IDS) Filed			0
16	12/23/2002		A	Response after Non-Final Action			0
15	09/26/2002	05/01/2002		Mail Non-Final Rejection	148		0.5
14	09/25/2002		CTNF	Non-Final Rejection			0
13	08/29/2002	•	DOCK	Case Docketed to Examiner in GAU			0
111	06/19/2002		PA	Change in Power of Attorney (May Include Associate POA)			0
10	06/19/2002		MP008	Mail-Record Petition Decision of Granted Related to Attorney			0
12	06/18/2002		C.AD	Correspondence Address Change			0
9	05/06/2002		PET.	Petition Entered			0
8	10/26/2001		DOCK	Case Docketed to Examiner in GAU			0
6	10/01/2001		OIPE	Application Dispatched from OIPE			0
37	07/23/2001		C602	Oath or Declaration Filed (Including Supplemental)			0
7	07/23/2001		LTDR	Incoming Letter Pertaining to the Drawings			•
5	04/17/2001		COMP	Application Is Now Complete			•
4	04/17/2001		INCD	Notice MailedApplication IncompleteFiling Date Assigned			0
3	04/17/2001		C.AD	Correspondence Address Change			0
2	03/23/2001		SCAN	IFW Scan & PACR Auto Security Review			0
1	03/01/2001		IEXX	Initial Exam Team nn			0
0.5	03/01/2001		EFILE	Filing date			0

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SF BAY AREA PATENTS LLC ATTN: ANDREW V SMITH, PHD 601 VAN NESS AVENUE #901 SAN FRANCISCO CA 94102 MAILED

JAN 23 2012

OFFICE OF PETITIONS

In re Shui T. Lai

Application No. 09/799,412

Filed: March 5, 2001 Patent No. 6,706,036 Issued: March 16, 2004 DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed December 23, 2011.

The fee deficiency submission under 37 CFR 1.28 of \$1760 for the 7.5 year maintenance fee is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Ully

Cliff Congo Petitions Attorney Office of Petitions PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))								
	r		`	K 1.378(C))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD	Docket Number (if applicable)				
6,467,682	2002-10-22	09/799,611	2001-03-07	1011.38328X00				
of the actual U.S. a 1.366(c) and (d).				entify: (1) the patent number and (2) the application number ee(s) is/are associated with the correct patent. 37 CFR				
SMALL ENTITY	ims, or has previously	claimed, small ent	ity status. See 37 (	DFR 1.27.				
LOSS OF ENTITL	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS all entity status. S	See 37 CFR 1.27(g)					
NOT Small Entity			Small Entity					
Fee	Code		Fee 3 ½ year	Code (2551)				
3 ½ year 7 ½ year	(1551) (1552)		7 ½ year	(2552)				
11 ½ year	` '		11 ½ yea	` '				
SURCHARGE		)(2) (Fee Code 1	558) must be paid a	s a condition of accepting unintentionally delayed payment				
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.					
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS				
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	NT OF THE MAIN	FENANCE FEE BE ACCEPTED AND THE PATENT				
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	PRIES				
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."								
I certify, in accordance with 37 CFR 1.4(d)(4) that I am								
An attorney or agent registered to practice before the Patent and Trademark Office								
A sole patentee								
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.								
A joint patentee; all of whom are signing this e-petition								
The assigne	The assignee of record of the entire interest							

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Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature /Ronald J. Shore/ Date (YYYY-MM-DD) 2011-10-30						
Name	Ronald J. Shore	Registration Number	28577			

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### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6467682

Issue Date: October 22,2002

Application No. 09799611 :DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Filed: March 7,2001

Attorney Docket No. 1011.38328X00

This is a decision on the electronic petition, filed October 31,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of

This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

### UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

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OFFICE OF PETITIONS

MICHAEL T. LUCAS 510 SOUTH CONGRESS AVENUE SUITE 204 AUSTIN, TX 78704

In re Patent No. 6,996,538

Issue Date: February 7, 2006

Application No. 09/799,879

Filed: March 7, 2001

Attorney Docket No. 40289.010900

ON PETITION

This is a decision on the petition under 37 CFR 1.378(b), filed June 28, 2010, to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

## The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, the Director will undertake no further reconsideration or review of the matter.

The patent issued February 7, 2006. The first (3 ½ year) maintenance fee was due February 7, 2010 and could have been paid from February 7, 2009 thru August 7, 2009 or with a surcharge during the period of August 8, 2009 thru February 7, 2010. Accordingly, the patent expired at midnight February 7, 2010 for failure to submit the first maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). This petition lacks item (1) above.

Petitioner asserts that he relied solely on the expertise of its counsel of record to determine and provide notices relating to all outstanding deadlines, including maintenance fees due, both in this matter and all other matters in its patent estate.

Petitioner has failed to meet his burden of proof in showing to the satisfaction of the Director that the delay in payment of the maintenance fee unavoidable within the meaning of 35 USC § 41(c) and 37 CFR 1.378(b)(3).

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray v. Lehman, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), aff'd dub nom. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the maintenance fee for this patent. Id.

As the patent holder at the time of expiration, it was incumbent on petitioner to have itself docketed this patent for payment of the maintenance fee in a reliable system as would be employed by a prudent and careful person with respect to his most important business, or to have engaged another for that purpose. See California Medical Products v. Technol Med. Prod., 921 F.Supp. 1219, 1259 (D.Del. 1995). Even where another has been relied upon to pay the maintenance fees, such asserted reliance per se does not provide a petitioner with a showing of unavoidable delay within the meaning of 37 CFR § 1.378(b) and 35 USC § 41(c). Id. Rather, such reliance merely shifts the focus of the inquiry from the petitioner to whether the obligated party acted reasonably and prudently. Id. Nevertheless, a petitioner is bound by any errors that may have been committed by the obligated party. Id.

However, the record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of petitioner to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement therein for petitioner's showing of the steps taken to pay the fee. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. In the absence of a showing of the steps taken by or on behalf of petitioner, 37 CFR 1.378(b)(3) precludes acceptance of the maintenance fee.

Petitioner asserts that The Nath Law Group, aka Nath & Associates were responsible for payment of the maintenance fee. Therefore, petitioner must provide a statement from nath & Associates showing: (1) the steps that were in place to ensure timely payment of the maintenance fee, (2) a complete explanation of how the system worked, (3) an explanation as to why the system failed in this instance, and (4) a documented showing that Nath & Associates was in fact obligated to track the fee on behalf of petitioner. Petitioner is advised, however, that the USPTO is not the forum for resolving a dispute between a patent owner and his representative as to who bore the responsibility for paying a maintenance fee. See Ray, 55 F. 3d at 610, 34 USPQ2d at 1789.

The showing or record is that petitioner was aware or should have been aware that the maintenance fee was due. Why was it unavoidable for petitioner to check whether the maintenance fee had been paid and, if the fee had not been paid, pay the fee?

Furthermore, the Letters Patent contains a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980. Accordingly, a reasonably prudent patentee would have inquired to see if his/her patent was subject to maintenance fees.

The record fails to disclose that the patentee took reasonable steps to ensure timely payment of the maintenance fee. In fact, the record indicates that no steps were taken by patentee to ensure timely payment of the maintenance fee. Since no steps were taken by patentee, 37 CFR 1.378(b) precludes acceptance of the delayed payment of the maintenance fee.

#### **ALTERNATIVE VENUE**

Petitioner should also note that since the maintenance fee was offered within 24 months of the date of expiration date of the patent, he has an alternate remedy under the unintentional provisions of 37 CFR 1.378(c) which does not require a showing of the delay in timely paying the maintenance fee in order to reinstate the patent. The \$700 already submitted would be applied to the \$1,640 fee owed under 37 CFR 1.378(c), leaving a balance due of \$940.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION

Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By Hand: U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries regarding this decision should be directed to April M. Wise at (571) 272-1642.

/dab/ David Bucci Petitions Examiner Office of Petitions

Attachment: blank copy of PTO/SB/66 Petition to Accept Unintentionally Delayed Payment of Maintenance Fee



### UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6996538

Issue Date:

February 7,2006

Application No. 09799879

Filed:

March 7,2001

:UNDER 37 CFR 1.378(c)

:DECISION GRANTING PETITION

Attorney Docket No. 40289.010900

September 13,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 13,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No. 10

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 525 B STREET SUITE 2200 SAN DIEGO, CA 92101

**MAILED** 

NOV 23 2010

OFFICE OF PETITIONS

In re Patent of Yair Bourlas et al.

Patent No. 6,459,687

Issue Date: October 1, 2002 Application No. 09/800,267

Filing Date: March 5, 2001 :

Attorney Docket No. 112174-000000

DECISION ON REQUEST FOR CERTIFICATE OF CORRECTION

This letter is in response to the "REQUEST FOR CERTIFICATE OF CORRECTION UNDER § 1.322," filed July 2, 2010, requesting correction of the patent term adjustment indicated in the patent. Patentees request the patent term adjustment read "12" days instead of "51" days.

## The request is **DISMISSED**.

During July 2010, the Office issued a notice in the federal register clarifying when the Office will change the patent term adjustment for a patent via issuance of a certificate of correction. The Notice states,

The USPTO ... has determined that it is not appropriate to provide a patent term adjustment recalculation via a certificate of correction under 35 U.S.C. 254 or 255. A certificate of correction is permissible under 35 U.S.C. 254 only for a mistake in a patent that "is clearly disclosed by the records of the Office." *See* 35 U.S.C. 254. While the applicable patent term adjustment is ascertainable from the records of the USPTO, a revised patent term adjustment determination requires a complex calculation that is not "clearly disclosed" by the records of the USPTO. In addition, a certificate of correction is permissible under 35 U.S.C. 255 only for "a mistake of a clerical or typographical nature, or of minor character." *See* 35 U.S.C. 255.

Thus, the USPTO has long maintained that a request for a certificate of correction under either 35 U.S.C. 254 or 255 is not an appropriate venue for seeking a change to the patent term adjustment indicated on the patent....

<sup>&</sup>lt;sup>1</sup> Treatment of Letters Stating That the USPTO's Patent Term Adjustment Determination is Greater Than What the Applicant or Patentee Believes is Appropriate, 75 Fed. Reg. 42079 (July 20, 2010).

[I]t is not appropriate to issue a certificate of correction under 35 U.S.C. 254 or 255 to revise the patent term adjustment indicated in the patent unless it is being revised for consistency with: (1) The patent term adjustment determined via a decision on a request for reconsideration under 37 CFR 1.705; or (2) the total patent term adjustment indicated on the Patent Application Information Retrieval (PAIR) screen that displays the patent term adjustment for the patent....

[T]he USPTO will not grant a request for a certificate of correction ... to revise the patent term adjustment indicated in the patent, except in the two situations discussed previously.<sup>2</sup>

Even if the number of days of patent term adjustment on a requested certificate of correction is less than the number of days listed on a patent, a certificate of correction will not be issued unless one of the previously identified exceptions exist. As stated by the Office, with emphasis added,

If the applicant or patentee wants the USPTO to reconsider its patent term adjustment determination, the applicant must use the procedures set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination, whether the USPTO's patent term adjustment determination is greater or less than the adjustment that the applicant believes to be appropriate.<sup>3</sup>

Neither of the two exceptions discussed in the previously quoted language apply in this case. Therefore, the request for a certificate of correction listing a patent term adjustment of 12 days is dismissed.

The patent file will now be forwarded to Files Repository for storage purposes.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney Office of Petitions

<sup>2</sup> Id. at 42079-42080.

<sup>&</sup>lt;sup>3</sup> Id. at 42080.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

September 20, 2010

Lisa B. Kole Baker Botts L.L.P. 30 Rockefeller Plaza 44<sup>th</sup> Floor New York, NY 10012-4498

Patent No.: 7,638,329 B2 Application No.: 09/800,448

Inventor(s): Santu Bandyopadhyay, et al.

Issued: December 29, 2009

Title: IN VITRO METHOD TO GENERATE DENDRITIC LANGERHANS TYPE CELLS

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.323.

A petition under C.F.R. 1.182 is required to correct the alleged errors in incorrect inventor's name or order of inventor's names, since inventor's names are printed solely in accordance with the typed/printed names (not the signatures), and since non-initialed and non-dated changes are not taken into consideration. Therefore, no correction is in order here under the provisions of Rule 1.322 and /or 1.323 (required fee currently \$100), unless a petition is granted (See M.P.E.P. 605.04(b).

In view of the foregoing, your request, in this mater, is hereby denied.

Any request under 37 CFR 1.182 (required fee currently \$130.00) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450 By hand:

**Customer Service Window** 

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-0025

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

/Virginia Tolbert/ Virginia Tolbert For Mary Diggs, Supervisor Decisions & Certificates of Correction Branch (571) 272-0460 (voice) (571) 270-9892 (fax) PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6575839	2003-06-10	09800967	2001-03-07	
of the actual U.S. 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	nims, or has previously	claimed, small er	itity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/W. Edward Ramage/	Date (YYYY-MM-DD)	2011-07-15			
Name	W. Edward Ramage	Registration Number	50810			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6575839

Issue Date:

June 10,2003

Application No. 09800967

Filed:

March 7,2001

Attorney Docket No. 3516

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

July 15,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

July 15,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART & OLSTEIN 6 Becker Farm Road Roseland NJ 07068

**MAILED** 

JUL 12 2011

OFFICE OF PETITIONS

In re Application of

Tahira Reid et al.

Application No. 09/801,162

Filed: March 7, 2001 Attorney Docket No. NOTICE

This is a notice regarding your request filed June 21, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Kendal M. Sheets appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Kendal M. Sheets desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Kendal M. Sheets, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (1571) 272-4584.

JoAnne Burke Retations Examiner Office of Petitions

cc: Kendal M. Sheets

CPA Global 2318 Mill Road, Suite 12 Floor

Alexandria, VA 22314



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

TOPE-MCKAY & ASSOCIATES 30765 PACIFIC COAST HIGHWAY #420 MALIBU, CA 90265

MAILED
MAR 2 1 2011
OFFICE OF PETITIONS

In re Patent of Neil Stratton

Patent No. 6,793,224

Issue Date: September 21, 2004

Application No. 09/801,536

Filing Date: March 8, 2001

Attorney Docket No. CS1001

Letter

# **Request for Information**

This letter is being issued in response to the petition under 37 CFR 1.378(b) filed November 1, 2010.

Petitioner should submit the information requested in this letter within **TWO MONTHS** of the mailing date of this letter. Extensions of time may not be obtained. No additional fee is due for a response to the instant request for information. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

#### Facts

Application No. 09/801,536 was filed March 8, 2001.

During late 2002, the firm of Tope-McKay & Associates began assisting the inventor, on a piece-meal basis," to respond to communications from the USPTO.

In order to reduce docketing costs and maintain control of prosecution, the inventor had all communications sent to the following address:

Eyreick Williamson, President Carver Skateboards, Inc. 245 Turnbull Canyon Road City of Industry CA 91745 Patent No. 6,793,224

The Office mailed a Notice of Allowance on February 20, 2003.

The inventor prepared and filed drawings and the issue fee transmittal form on April 15, 2003.

Office records failed to indicate the Office received the issue fee. As a result, the Office mailed a Notice of Abandonment on June 27, 2003.

A petition under 37 CFR 1.137(b) was filed by the law firm on June 8, 2004. The petition asserted a check for the issue fee was filed with the April 15, 2003 papers. A decision granting the petition under 37 CFR 1.137(b) was mailed June 16, 2004.

The application issued as patent on September 21, 2004.

As a courtesy, the law firm entered the maintenance fee due date into its docketing system.

The 3.5 year maintenance fee could have been paid from September 21, 2007, to March 21, 2008, or with a surcharge from March 22, 2008, to September 22, 2008.

At the time the maintenance fee first became due, "Carver Skateboards, Inc. was managed by Eyreick Williamson, who was responsible for ensuring payment of the Maintenance Fee window."

On or about February 29, 2008, the law firm sent a maintenance fee reminder via e-mail to neil.stratton@comcast.net, the e-mail address for the inventor in the firm's docketing system. However, the inventor never received the e-mail because his correct e-mail address was neilstratton@comcast.net.

The petition states,

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Petitioner was displeased with the management as provided by Eyreick Williamson and, in approximately August of 2008, the Petitioner removed Eyreick Williamson and took over Carver Skateboards, Inc.; however, Petitioner believed that the Maintenance Fee had been taken care of by previous management.

On October 19, 2010, the law firm discovered the expiration of the patent while preparing a letter to a competitor alleging infringement of the patent.

The instant petition was filed November 1, 2010.

## Request

The petition references several exhibits. However, the Office is unable to locate a copy of any of the exhibits in the file. The Office requests Petitioner supply a copy of the exhibits.

Patent No. 6,793,224

## Recommendation

The Office strongly recommends, but is not requiring, Petitioner supply a statement from both Williamson and Stratton.

The Office also strongly recommends, but is not requiring, Petitioner supply information addressing the following questions:

- 1. Did Stratton ever assign his rights in the patent to Carver Skateboards? If yes, when?
- 2. Did Stratton inform Williamson that Stratton was relying on Williamson to ensure maintenance fees would be timely paid for the patent?
- 3. Did Williamson ever agree to take steps to ensure maintenance fees would be timely paid for the patent?
- 4. Did Stratton take any steps to ensure maintenance fees would be timely paid for the patent? If yes, what steps did he take?
- 5. Did Williamson take any steps to ensure maintenance fees would be timely paid for the patent? If yes, what steps did he take?
- 6. What is the specific date on which Stratton replaced Williamson?
- 7. Why did Stratton, when he replaced Williamson, assume the 3.5 year fee had already been paid even though the last day the fee could have been timely paid was September 22, 2008?
- 8. What steps, if any, did Stratton take to ensure the 7.5 year maintenance fee would be timely paid?

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.<sup>1</sup>

Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
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# OFFICE OF PETITIONS

In re Patent of Neil Stratton

Patent No. 6,793,224

Issue Date: September 21, 2004

Application No. 09/801,536

Filing Date: March 8, 2001

Attorney Docket No. CS1001

Decision on Petition

This is a decision on the petition under 37 CFR 1.378(b) filed November 1, 2010, as supplemented on May 13, 2011.

The petition is dismissed.

# **Background**

Application No. 09/801,536 was filed March 8, 2001.

The sole inventor is Neil Stratton.

On or about March 8, 2001, Stratton assigned his rights to the invention to Carver Skateboards, Inc. ("Owner 1").

Eyerick Williamson was the Chief Executive Officer and Chief Financial Officer of Owner 1.

During late 2002, the firm of Tope-McKay & Associates began assisting Owner 1 with the prosecution of the application "on a piece-mail basis." However, the Office was not instructed to send communications to the law firm and, as of November 12, 2002, the correspondence address of record for the application was:

Eyreick Williamson, President Carver Skateboards, Inc. 245 Turnbull Canyon Road City of Industry CA 91745

The application issued as a patent on September 21, 2004.

During the time period from 2000 to June 2008, Williamson paid all fees and legal costs related to the patent, and Williamson did not discuss payment of most of the fees with the inventor.

Williamson's statement states, "I believed our new law firm would contact us regarding any notices or fees."

The inventor's statement states the inventor believed the law firm "would contact [Owner 1] or myself with any notices."

The 3.5 year maintenance fee could have been paid from September 21, 2007, to March 21, 2008, or with a surcharge from March 22, 2008, to September 22, 2008.

The law firm's docketing system included an e-mail address for the inventor and the law firm sent a maintenance fee reminder to the e-mail address on February 29, 2008. However, the e-mail was not received because the e-mail address for the inventor in the docketing system included a typographical error. Specifically, the docketing system identified the e-mail address as neil.stratton@comcast.net instead of neilstratton@comcast.net.

The law firm did not receive any response to the February 29, 2008 e-mail.

During June 2008, Williamson and the inventor decided to dissolve Owner 1 and divided up Owner 1's assets. The inventor states, when Williamson and the inventor discussed the division of the assets, Williamson assured the inventor all the assets, including the patent, were current and in full force.

The 3.5 year maintenance fee was not paid on or before September 22, 2008. As a result, the patent expired on September 22, 2008.

On October 19, 2010, the law firm discovered the expiration of the patent while preparing a letter to a competitor alleging infringement of the patent.

On a date after the dissolution of the company, but before May 7, 2010, ownership rights in the patent were transferred from Owner 1 to Carver International Co. ("Owner 2").

A petition under 37 CFR 1.378(b) was filed November 1, 2010.

The Office mailed a Request for Information on March 21, 2011.

A response to the Request for Information was filed May 13, 2011.

#### <u>Law</u>

A grantable petition under 37 C.F.R. § 1.378(b) must be accompanied by a showing to the satisfaction of the Director that the <u>entire</u> delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was <u>unavoidable</u>.

In order for a party to show unavoidable delay, the party must show "reasonable care was taken to ensure that the maintenance fee would be promptly paid." The level of "reasonable care" required to be shown is the same as the level of "care or diligence ... generally used and observed by prudent and careful men in relation to their most important business." When determining if a period of delay has been shown to have been unavoidable, the Office will take "all the facts and circumstances into account" and will decide each petition "on a case-by-case basis."

35 U.S.C. § 41(c)(1) states, with emphasis added, "The Director may accept the payment of any maintenance fee . . . after the six month grace period if the delay is *shown to the satisfaction of the Director* to have been unavoidable." Therefore, <u>petitioner has the burden of proof</u>. The decision will be based solely on the written, administrative record in existence. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

The Office and Congress have recognized the unavoidable standard can be very difficult to meet. During 1992, Congress considered the difficulty involved in reinstating a patent under the unavoidable. Congressional representatives described the unavoidable standard as inflexible, extremely hard to meet, too stringent and harsh. Congress did NOT take steps to make the unavoidable standard more flexible, easier too meet, less stringent, or less harsh. Instead, Congress determined that it would allow patent owners the ability to reinstate a patent under an "unintentional" standard as long as the petition was filed within 24 months of the expiration of the patent. Congress chose to continue requiring proof of unavoidable delay for petitions filed after the 24 month time period.

### **Analysis**

### Owner 1's Conduct

The inventor took over Owner 1 during June 2008.

<sup>&</sup>lt;sup>1</sup> 37 C.F.R. § 1.378(b).

<sup>&</sup>lt;sup>2</sup> In re Mattulath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). See also Ray v. Lehman, 55 F.3d 606, 34 U.S.P.Q.2d (BNA) 1786 (Fed. Cir. 1995) (citations omitted) ("[1]n determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person.")

<sup>&</sup>lt;sup>3</sup> Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982).

<sup>&</sup>lt;sup>4</sup> "[The unavoidable] standard has been found to be <u>extremely</u> hard to meet. Some patent owners have lost their patent rights due to this <u>inflexible</u> standard." 138 CONG. REC. S16613, 16614 (September 30, 1992) (Rep. DeConcini) (emphasis added). "The unavoidable standard has proved to be <u>too stringent</u> in many cases." 138 CONG. REC. H1115 (October 3, 1992) (Rep. Hughes) (emphasis added). "The unavoidable standard is '<u>too stringent</u>. Some patent owners have lost their patent rights due to circumstances that do not warrant this <u>harsh</u> result, but that could not be considered 'unavoidable' under current law." 138 CONG. REC. E1688 (June 4, 1992) (extension of remarks of Rep. McCollum) (emphasis added).

The inventor's statement states,

From 2000 to [June] 2008, Williamson ... handled all legal and financial matters... During this time Williamson paid all the legal fees pertaining to the patent, and most of these were not discussed with me unless there was a design question....

When Williamson and I decided to split in June of 2008, and the division of the company's assets were discussed, including this patent, I was assured that everything was current and in full force.... I trusted the patent had been renewed as I had been told.

The inventor's statement explicitly states he had been told the patent was renewed. However, Williamson's statement does not indicate Williamson ever told the inventor any maintenance fee had been paid for the patent, and the record fails to disclose any motive Williamson would have had for making such a statement.

The inventor's assertion he was told the patent was renewed appears to be based on the inventor's interpretation that a statement asserting Owner 1's assets, including the patent, were current and in full force is the equivalent of a statement the 3.5 year maintenance fee was paid. However, since the 3.5 year maintenance fee could have been paid as late as September 22, 2008, a statement asserting the assets were current and in full force was not the equivalent of a statement the fee had been paid. For example, if an individual's monthly car payment can be paid as late as May 30, 2011, an assertion by the individual that all car payments are current made on May 15, 2011, would not the equivalent of a statement the payment due by May 30, 2011, was already paid. Therefore, the record fails to show a reasonable and prudent person, treating the patent with the same level of care the person would use when handling the person's most important business, would have assumed the maintenance fee had already been paid based on Williamson's ambiguous statement.

Although a statement by Williamson that the patent was current and in full force was not necessarily an indication the maintenance fee had already been paid, a reasonable person could interpret the statement, when viewed in conjunction with all the other facts in this case, as an indication Williamson had responded to all prior notices related to the patent sent to Owner 1 from the firm. Therefore, the inventor's belief the fee had been paid, may well have been the result of:

- 1. An assumption the firm would notify Owner 1 when a maintenance fee became due,
- 2. An assumption Williamson had responded to any notices a maintenance fee was due for the instant patent received prior to the date the inventor assumed control of Owner 1, and
- 3. The fact the inventor did not receive any notices indicating any maintenance fee was due after the date the inventor assumed control of Owner 1.

As to item 1 listed above, the inventor appears to have assumed the law firm would notify Owner 1 when maintenance fees became due. However, the record fails to establish such an assumption

was consistent with the level of care normally exercised by reasonable and prudent individuals when handling their most important business.

The November 1, 2010 petition states,

In approximately November of 2002, Petitioner engaged the services of [the law firm] to assist Petitioner, on a piece-meal basis, in responding to Office actions and other communications from the USPTO....

Petitioner wanted to reduce docketing costs and maintain further control of the Patent Application. As such, although Petitioner engaged [the law firm] to respond to USPTO communications related to the Patent Application, such communication continued to be mailed to [Owner 1] and [the law firm] was not made the attorney of record.

The language quoted directly above clearly indicates Owner 1 hired the law firm on a *piece-meal basis* in order to reduce costs and maintain control of the patent. The language also appears to indicate Owner 1 would receive a notice or communication from the USPTO and then contact the law firm for assistance in responding to the notice or communication. The record does not indicate the law firm was responsible for monitoring the case and notifying Owner 1 each time a legal obligation involving the case arose. In other words, the record fails to establish the fact a party has hired a law firm on a piece-meal basis, without more, warrants an assumption the law firm is obligated to notify the party when maintenance fees become due.

The inventor's statement states, with emphasis added, "At the time we completed the patent we also set up a notification system that would alert us to any notices, updates, and renewal fees." The quoted language *implies*:

- 1. The inventor and the law firm explicitly discussed the subject of renewal fees,
- 2. The inventor and the law firm agreed the firm would notify the inventor when such fees became due, and
- 3. The inventor and the law firm set up a *reliable* system to notify Owner 1 when the fees became due.

Although the quoted language implies the facts above are true, the record does not include a statement from any individual at the law firm stating Owner 1 and the law firm explicitly discussed maintenance fees and/or worked together to set up a system to notify Owner 1 when maintenance fees became due. In addition, the petition does *not* state the law firm and the inventor set up the notification system, does *not* state the law firm was legally obligated to enter the matter into the docketing system, does not state the law firm was legally obligated to notify Owner 1 when the fee became due, or state the firm informed the inventor or Williamson that the patent had been entered into the docketing system. Therefore, the Office will not interpret the quoted language, at this time, as the equivalent of a clear assertion that the inventor and the law firm explicitly discussed the subject of renewal fees, agreed the firm would notify the inventor when such fees became due, and set up a *reliable* system to notify Owner 1 when the fees became due.

The Office recognizes the firm did enter the patent into a docketing system that would alert the firm when the 3.5 year maintenance fee became due. However, the record fails to indicate whether or not the law firm docketed the patent as a courtesy or as the result of a legal obligation. In addition, the record fails to indicate the law firm told Owner 1 that the law firm would notify Owner 1 when the maintenance fee became due.

In view of the prior discussion, the record fails to establish Owner 1's conduct, via the inventor's conduct, was consistent with the level of care normally exercised by reasonable and prudent individuals when handling their most important business.

The Office notes Williamson's statement does not address, or even acknowledge the existence, of, any discussion of the patent between Williamson and the inventor during June 2008. If a request for reconsideration is filed, the request should include a new statement by Williamson. The statement should fully address *all* discussions of the patent between Williamson and the inventor during June 2008. For example, Williamson should address the inventor's assertion Williamson assured the inventor all the assets, including the patent, were current and in full force.

### Owner 2's Conduct

The record fails to identify the exact date Owner 2 became the owner of the patent. However, the record appears to indicate the inventor is the individual at Owner 2 responsible for handling patent matters. Therefore, the exact date Owner 2 became the owner of the patent is unnecessary since the discussion of Owner 1's conduct appears to apply equally to Owner 2.

### The Law Firm's Conduct

Even if the record established the law firm was under a clear legal obligation to notify Owner 1 when the 3.5 year maintenance fee became due, the petition could not be granted.

Reliance on a third party representative does not, per se, constitute "unavoidable" delay. When a party relies on an attorney to take certain steps, the petition must address not only the party's actions but also must address the attorney's actions or inactions.<sup>5</sup> A showing is insufficient if it merely establishes that a petitioner did everything the petitioner could do monitor the attorney's actions and inactions, but fails to address the attorney's conduct.<sup>6</sup>

<sup>&</sup>lt;sup>5</sup> See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 396, 397 (1993) ("The [Circuit] court also appeared to focus its analysis on whether respondents did all they reasonably could in policing the conduct of their attorney, rather than on whether their attorney, as respondents' agent, did all he reasonable could to comply with the court-order bar date. In this, the court erred. . . . [I]n determining whether respondents' failure to file their proof of claim prior to the bar date was excusable, the proper focus is upon whether the neglect of respondents and their counsel was excusable." (emphasis in original)). In Huston v. Ladner, 973 F.2d 1564, 1567, 23 U.S.P.Q.2D (BNA) 1910 (Fed. Cir. 1992), the court determined the client was bound by the attorney's actions. The majority was unpersuaded by the dissent which states in part that the "errors occurred despite exceptional vigilance by the client."

<sup>&</sup>lt;sup>6</sup> See Id.

In essence, one may not prove unavoidable delay by proving that one shifted the burden to take an appropriate action to a third party. If one chooses to rely on the actions or inactions of a third party, one will be bound by such actions or inactions. As recognized by the Supreme Court, with emphasis added,

Petitioner voluntarily chose his attorney as his *representative* in the action and he cannot now avoid the consequences of the acts or omissions of this freely selected *agent* ... Each party is deemed bound by the acts of his lawyer-*agent* and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.<sup>7</sup>

Williamson was the individual at Owner 1 responsible for handling payment of legal fees and costs at the time the e-mail was sent, and Williamson would have been the individual who would have submitted the maintenance fee to the law firm, or directly to the USPTO. The record fails to indicate the law firm ever attempted to contact Williamson to inform him the 3.5 year maintenance fee was due. The record fails to provide any explanation for the law firm's failure to attempt to contact Williamson.

The law firm did make an attempt to contact the inventor using an e-mail address for the inventor. The firm's rationale for attempting to contact the inventor by e-mail is unclear. Specifically, the record fails to indicate the inventor ever informed the law firm to send communications to the inventor by e-mail or indicate the law firm had successfully received responses to e-mails concerning this case from the inventor in the past.

The record also fails to indicate the law firm used e-mails to correspond with the inventor when handling other cases. Office records indicate Application No. 11/039,617 was filed by the law firm on January 19, 2005, and Application No. 12/080,342 was filed by the law firm on April 2, 2008. The inventor in this case is identified as the inventor in both applications. Both applications eventually issued as patents. The record does not indicate whether or not communications with the inventor pertaining to the other applications were conducted via e-mail or another method.

Although the record fails to identify the exact reason the firm attempted to contact the inventor via e-mail, the use of an e-mail address when sending a notice is not *per se* unreasonable. For example, if the firm had received a response to the e-mail, the failure to send the notification by any other means might well have been reasonable. In this case, the law firm did not receive a response to the e-mail.

A variety of situations can result in a party failing to receive a response to an e-mail. Such situations include, *but are not limited to*:

1. The recipient's e-mail address set forth in the sender's records may contain a typographical error,

<sup>&</sup>lt;sup>7</sup> Link v. Wabash Railroad Co., 370 U.S. 626, 633-634, 8 L. Ed. 2d 734, 82 S. Ct. 1386 (1962) (quoting Smith v. Ayer, 101 U.S. 320, 326 (1880)).

2. The sender may make a typographical error when typing the recipient's e-mail address when preparing the e-mail,

- 3. The recipient may no longer use the e-mail address,
- 4. The host of the recipient's e-mail address may use spam filtering software that results in the e-mail being automatically placed in a trash folder,
- 5. The e-mail might not be received as a result of a "glitch" in hardware, software, a server, or other item, and
- 6. The recipient may read the e-mail and believe a response is unnecessary,
- 7. The recipient may read the e-mail and consider the matter to lack enough value to warrant spending time responding to the e-mail.

The record fails to indicate the law firm took any action after failing to receive a response to the e-mail, and fails to set forth any explanation for the law firm's failure to take any further actions to contact the inventor (or Williamson).

The Office has reviewed all the facts of record and determined the record fails to prove, <u>if</u> the law firm was legally obligated to notify Owner 1 when the 3.5 year fee became due, the law firm's failure to take any action to contact Williamson, in conjunction with the firm's failure to take any additional actions to contact the inventor, was consistent with the level of care normally exercised by reasonable and prudent individuals when handling their most important business

## Petitioner's Current Options

# I. <u>Petitioner may file a request for reconsideration</u>.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision and include a non-refundable petition fee of \$400. Extensions of time under 37 C.F.R. § 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.378(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

After a decision on the petition for reconsideration is issued, no further reconsideration or review of the matter will be undertaken by the Director. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that it is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable. Therefore, if a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. <u>Petitioner may request a refund of the maintenance fee and surcharge which accompanied the</u> petition.

Since the petition is dismissed, petitioner may request a refund of the maintenance fee and surcharge. Petitioner is reminded that if a request for reconsideration is later filed along with the

\$400 fee, the \$400 will not be refunded. A request for a refund should be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany any request for refund.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.8

Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office

Customer Service Window

Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley Senior Petitions Attorney

Office of Petitions

<sup>&</sup>lt;sup>8</sup> General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

TOPE-MCKAY & ASSOCIATES 30765 PACIFIC COAST HIGHWAY #420 MALIBU, CA 90265

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OFFICE OF PETITIONS

In re Patent of Neil Stratton

Patent No. 6,793,224

Issue Date: September 21, 2004

Application No. 09/801,536

Filing Date: March 8, 2001

Attorney Docket No. CS1001

Decision on Petition

This is a decision on the renewed petition under 37 C.F.R. § 1.378(b) filed July 28, 2011, which requests acceptance of the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. The terms of 37 C.F.R. § 1.378(e) do not apply to this decision and no further consideration will be given to this matter.

Since this patent will not be reinstated, a refund of the \$490 maintenance fee and the \$700 surcharge will be scheduled. The \$400 fee for requesting reconsideration is not refundable.

#### Procedural Background

The patent issued September 21, 2004. The 3.5 year maintenance fee could have been paid from September 21, 2007, to March 21, 2008, or with a surcharge from March 22, 2008, to September 22, 2008. The fee was not timely paid. Accordingly, the patent expired on September 22, 2008.

A petition under 37 C.F.R. § 1.378(b) was filed November 1, 2010.

The Office mailed a Request for Information on March 21, 2011.

A response to the Request for Information was filed May 13, 2011.

A decision dismissing the petition under 37 C.F.R. § 1.378(b) was mailed May 25, 2011.

<sup>&</sup>lt;sup>1</sup> See MPEP 1002.02.

<sup>&</sup>lt;sup>2</sup> September 21, 2008 was a Sunday. Therefore, the fee and surcharge could have been timely paid as late as September 22, 2008.

The instant request for reconsideration was filed July 28, 2011.

#### Applicable Statutes and Regulation

35 U.S.C. § 41(b) states in pertinent part that, "Unless payment of the applicable maintenance fee is received . . . on or before the date the fee is due or within a grace period of six months thereafter, the patent shall expire as of the end of such grace period."

35 U.S.C. § 41(c)(1) states that, "The Director may accept the payment of any maintenance fee... after the six month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable." (emphasis added)

37 C.F.R. § 1.378(b)(3) states that any petition to accept delayed payment of a maintenance fee must include:

A showing that . . . reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee . . . became aware of . . . the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent.

### **Opinion**

Petitioner must establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

A grantable petition under 37 C.F.R. § 1.378(b) must be accompanied by a showing to the satisfaction of the Director that the <u>entire</u> delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was unavoidable.

In order for a party to show unavoidable delay, the party must show "reasonable care was taken to ensure that the maintenance fee would be promptly paid." The level of "reasonable care" required to be shown is the same as the level of "care or diligence ... generally used and observed by prudent and careful men in relation to their most important business." When determining if a period of delay has been shown to have been unavoidable, the Office will take "all the facts and circumstances into account" and will decide each petition "on a case-by-case basis."

35 U.S.C. § 41(c) requires a party to show the delay in payment of a maintenance fee was unavoidable. Therefore, petitioner has the burden of proof. The decision will be based solely on

<sup>&</sup>lt;sup>3</sup> 37 C.F.R. § 1.378(b).

<sup>&</sup>lt;sup>4</sup> In re Mattulath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). See also Ray v. Lehman, 55 F.3d 606, 34 U.S.P.Q.2d (BNA) 1786 (Fed. Cir. 1995) (citations omitted) ("[I]n determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person.")

<sup>&</sup>lt;sup>5</sup> Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982).

the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must <u>prove</u> that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

#### **Facts**

Application No. 09/801,536 was filed March 8, 2001.

Neil Stratton is the sole inventor.

Eyerick Williamson was the Chief Executive Officer and Chief Financial Officer of Carver Skateboards, Inc. ("CSB"") at the time the application was filed.

On or about March 8, 2001, Stratton assigned his rights to the invention to CSB.

Williamson paid all fees and legal costs related to the patent. Stratton "only discussed patent-related issues with [Williamson] when there was a design issued involved."

During late 2002, the firm of Tope-McKay & Associates began assisting CSB with the prosecution of the application "on a piece-mail basis."

The application issued as the instant patent on September 21, 2004.

The 3.5 year maintenance fee could have been paid from September 21, 2007, to March 21, 2008, or with a surcharge from March 22, 2008, to September 22, 2008.

The record indicates, but for a typographical error in the law firm's docket system, the law firm would have notified CSB on February 29, 2008, that the 3.5 year maintenance fee was due.

On an unspecified date prior to June 1, 2008, Williamson learned the 3.5 year maintenance fee was due. In other words, CSB's failure to receive notification from the law firm that the fee was due did *not* result in CSB being unaware of the need to pay the maintenance fee.

Prior to June 1, 2008, Williamson and Stratton decided to dissolve Carver and began to negotiate the division of CSB's assets.

Stratton states,

It was during these negotiations that the shareholders began to notice the fraudulent activities of [Williamson]. We discovered that he had embezzled cash from Carver.... We also began to discover unpaid bills that had been accumulating and which [Williamson] failed to disclose, including a large payment due to Christie, Parker & Hale LLP.<sup>7</sup>

<sup>&</sup>lt;sup>6</sup> Page 1 of Stratton declaration filed July 28, 2011.

<sup>7</sup> Ibid.

## Williamson states,

Payment of the maintenance fee was not the only legal fee item I kept secret. In fact, as I was aware, there was a large outstanding legal fee due to Christie Parker Hale (CPH) that resulted from a default judgment against Carver. In addition to these items, there were also other non-legal debts that I did not divulge.<sup>8</sup>

During negotiations, Williamson told the inventor "the patent renewal (maintenance) fee currently due had already been paid." Stratton states,

I trusted that the patent had been renewed as I had been told especially in light of [Williamson's] position as the leader of our company and as a fiduciary.... At the time, I had no reason to suspect that the fee had not been paid.<sup>10</sup>

On June 1, 2008, Williamson and the inventor entered into a "Division of Assets" agreement. Petitioner asserts that, as a result of the agreement, the inventor became the owner of the patent.

The 3.5 year maintenance fee was not paid on or after September 22, 2008. As a result, the patent expired on September 22, 2008.

On October 19, 2010, the law firm discovered the expiration of the patent while preparing a letter to a competitor alleging infringement of the patent.

# <u>Analysis</u>

The only assignment document recorded against the patent was recorded on May 17, 2010, and the document filed May 17, 2010, asserts Stratton is the owner of the patent. In other words, USPTO records fails to indicate the patent was assigned to any party prior to May 17, 2010, and Stratton is presumed to be the owner of the patent, and to have had ownership and control of the patent, at all relevant times. Since Stratton owned the patent, the Office must determine if the record establishes Stratton's delay in payment of the 3.5 year maintenance fee was unavoidable. See Burandt v. Dudas, 528 F.3d 1329, 1334 (Fed. Cir. 2008).

Petitioner argues the record is sufficient to demonstrate unavoidable delay in view of *Futures Technology*, *Ltd. v. Quigg*, 684 F. Supp. 430, 431 (E.D. Va. 1988). However, *Futures* "concerned [reviving an] abandoned patent application[] pursuant to 37 C.F.R. § 1.137, rather than reinstatement of [an] expired patent[] due to nonpayment of maintenance fees pursuant to 37 C.F.R. § 1.378." *Burandt*, 528 F.3d at 1334. Since the instant case involves the expiration of a patent, the Office is not persuaded the holding in *Futures* requires reinstatement of the patent.

The law firm of Tope McKay was engaged for the purposes of tracking the maintenance fee. A reminder letter was prepared by the firm. The reminder letter was e-mailed to an incorrect address. As a result, the reminder letter was not received by CSB, Williamson, or the inventor.

<sup>&</sup>lt;sup>8</sup> Page 2 of Williamson declaration filed July 28, 2011.

Page 1 of Stratton declaration filed July 28, 2011.

<sup>10</sup> *Id.* at 1-2

However, despite non-receipt of the reminder letter, petitioner knew that the maintenance fee was due and relied upon Eyerick Williamson, the CEO of CSB, to pay the fee.

As of June 1, 2008, Stratton had strong reasons to doubt Williamson's credibility. Specifically, Stratton was aware Williamson had been embezzling money and concealing debts owed by Carver.

Despite the existence of these strong reasons to conclude Williamson was untrustworthy, Stratton trusted and relied on Williamson's assertion the maintenance fee had been paid. Stratton states, "I trusted that the patent had been renewed as I had been told especially in light of [Williamson's] position as the leader of our company and as a fiduciary." 11

Stratton could have taken steps to determine if Williamson's assertion the maintenance fee had been paid was true. For example, Stratton could have contacted the USPTO to determine if the fee had been paid. The record fails to demonstrate Stratton took any independent steps to determine if Williamson's assertion the maintenance fee had been paid was true.

In view of the prior discussion, the record is insufficient to establish Stratton exercised the level of care generally used by reasonable and prudent individuals when handling their most important business. In other words, the record is insufficient to establish Stratton's delay in payment of the fee was unavoidable.

### Decision

The prior decision which refused to accept under 37 C.F.R. § 1.378(b) the delayed payment of a maintenance fee for the above-identified patent has been reconsidered. For the reasons herein and stated in the previous decision, the entire delay in this case cannot be regarded as unavoidable within the meaning of 35 U.S.C.§ 41(c)(1) and 37 C.F.R. § 1.378(b). Therefore, the petition is **denied**.

As stated in 37 C.F.R. § 1.378(e), the Office will not further consider or review the matter of the reinstatement of the patent.

The patent file is being forwarded to Files Repository.

Telephone inquiries may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Anthony Knight

Director

Office of Petitions

<sup>11</sup> *Id*. at 1.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

MCKENNA LONG & ALDRIDGE LLP 1900 K STREET, NW WASHINGTON DC 20006 MAILED

JAN 20 2011

OFFICE OF PETITIONS

In re Patent No. 6,797,621

Issue Date: September 28, 2004

Application No. 09/801,804

Filed: March 9, 2001

Attorney Docket No. 8733.304.00

**ON PETITION** 

This is a decision on the petition filed November 12, 2010, which is being treated as a request under 37 CFR 3.81(b)<sup>1</sup> to add the name of the second assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3215. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Charlema Grant

Petitions Attorney

Office of Petitions

<sup>&</sup>lt;sup>1</sup> See MPEP 1309, subsection II; and Official Gazette of June 22, 2004.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 223134040

Patent No. : 6,797,621 B2 Ser. No. : 09/801,804 Inventor(s) : Song et al.

Issued : Sep. 28, 2004

Title : ETCHANT COMPOSITION FOR MOLYBDENUM AND METHOD OF

**USING SAME** 

Docket No. : 8733.304.00

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing incorrect or erroneous assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1. 17(i) (currently \$130);
- <u>B.</u> a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
- <u>C.</u> a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(703) 872-9306

ATTN: Office of Petitions

If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3435 or (703) 756-1814





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE WA 98101-2347 MAILED
DEC 1 4 2010
OFFICE OF PETITIONS

In re Application of C. Keith Application No. 09/801,848

Filed: March 8, 2001
Attorney Docket No. 125462

Title: PLATFORM FOR MARKET
PROGRAMS AND TRADING PROGRAMS

ON APPLICATION FOR

PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM UNDER 37 CFR §1.705," filed November 10, 2010. This request is properly treated under 37 CFR 1.705(b). Applicant disputes the seven hundred forty-two (742) day adjustment.

The application for patent term adjustment is DISMISSED.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

On August 10, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date is 348 days. In response, applicants timely filed the instant request for reconsideration of the patent term adjustment.

Applicant contends that the restriction requirement mailed on May 19, 2004 did not meet the requirements of 37 CFR 1.702(a)(1) because the restriction requirement was vacated. As such the first action was mailed on January 3, 2007. Thus an adjustment of 1701 days is required.

Applicant's argument is not persuasive. A review of the record shows that the 742 day adjustment was required for failure by

the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date the application was filed under 35 USC 1.111(a), pursuant to 37 CFR \$1.702(a)(1).

The mailing of the restriction requirement on May 19, 2004, met the requirements of 37 CFR §1.702(a)(1). The subsequent mailing of a communication by the acting SPE vacating the previous action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(1) on May 19, 2004. The examiner does not have the authority to vacate, rescind, or withdraw an Office action. Unless vacated by the Technology Center Director, for purposes of calculating patent term adjustment, the action originally mailed by the examiner on May 19, 2004 will be used to calculate the amount of Office delay.

Applicant's delay prior to the mailing of the Notice of Allowance is 394 days. Office delay prior to the mailing of the Notice of Allowance is 742 days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 348 days.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

Anthony Knight

Director

Office of Petitions

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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JUN 14 20:1

OFFICE OF PETITIONS

SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938
MINNEAPOLIS MN 55402

In re Patent No. 6,574,634 Issue Date: June 3, 2003

Application No. 09/801,940

Filed: March 8, 2001

Attorney Docket No. 1285.042US1

**NOTICE** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed May 23, 2011.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

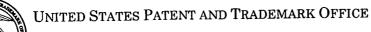
Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant

**Petitions Attorney** 

Office of Petitions

	JEL HESFONSE I O	R CERTIFICATE OF CORRECTION
DATE	: April 5, 2011	Paper No.:
DATE	· Allinanskiii	
TO SPE OF SUBJECT	: ART UNIT <u>3693</u> : Request for Certificate of Correcti	on for Appl. No. <u>09/802005                                  </u>
	·	C of C mailroom date:03-2111
Please respo	ond to this request for a certi	ficate of correction within 7 days.
IFW applicat		rrections as shown in the <b>COCIN</b> document(s) in t should be introduced, nor should the scope or
•	olete the response (see belowent code <b>COCX</b> .	w) and forward the completed response to scannin
		<u> Magdalene Talley</u>
000000000000000000000000000000000000000		Certificates of Correction Branch
		Certificates of Correction Branch
Thank You	For Your Assistance	
The request		
The request	t for issuing the above-ide	571-272- 0423
The request Note your decision	t for issuing the above-ide on the appropriate box.	571-272- 0423 ntified correction(s) is hereby:
The request Note your decision	t for issuing the above-ide on the appropriate box.  Approved  Approved in Part	571-272- 0423  ntified correction(s) is hereby:  All changes apply.
The request Note your decision X	t for issuing the above-ide on the appropriate box.  Approved  Approved in Part  Denied	ntified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.
The request Note your decision X	t for issuing the above-ide on the appropriate box.  Approved  Approved in Part  Denied	ntified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.
The request Note your decision  X  Comments:	t for issuing the above-ide on the appropriate box.  Approved  Approved in Part  Denied	ntified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.
The request Note your decision  X  Comments:	t for issuing the above-ide on the appropriate box.  Approved  Approved in Part  Denied	ntified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.
The request Note your decision  X  Comments:	t for issuing the above-ide on the appropriate box.  Approved  Approved in Part  Denied	ntified correction(s) is hereby:  All changes apply.  Specify below which changes do not apply.  State the reasons for denial below.





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TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO CA 94111-3834

MAILED

OCT 05 2010

**OFFICE OF PETITIONS** 

In re Patent No. 6,882,691

Issue Date: April 19, 2005

Application No. 09/802,586

Filed: March 8, 2001

Attorney Docket No. 026153-010600US

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/ April M. Wise Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

Joseph E Kovarik Esq Sheridan Ross PC **Suite 1200** 1560 Broadway Denver CO 80202-5141

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Patent No. 6,973,812

Issue Date: December 13, 2005

Application No. 09/802,852

Filed: March 9, 2001

Attorney Docket No. 4690-1

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed December 2, 2010 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on December 14, 2009, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the sixmonth grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet **Petitions Examiner** Office of Petitions

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))								
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)				
6552460	2003-04-22	09803007	2001-03-08	APE-2.001				
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY								
<ul> <li>✓ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.</li> <li>LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS         <ul> <li>Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)</li> </ul> </li> </ul>								
NOT Small Entity			Small Entity					
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)				
7 ½ year	(1552)		7 ½ year	(2552)				
11 ½ year	` '		11 ½ year	(2553)				
SURCHARGE The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.								
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.								
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL								
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED								
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES								
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."								
I certify, in accordance with 37 CFR 1.4(d)(4) that I am								
An attorney or agent registered to practice before the Patent and Trademark Office								
A sole patentee								
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.								
A joint patentee; all of whom are signing this e-petition								
The assignee of record of the entire interest								

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/Paul J. Fordenbacher/	Date (YYYY-MM-DD)	2011-11-22	
Name	Paul J. Fordenbacher	Registration Number	42546	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6552460

Issue Date: April 22,2003

Application No. 09803007

Filed: March 8,2001

Attorney Docket No. 7994.001

:

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

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This is a decision on the electronic petition, filed November 22,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Patent No. 7,039,140 Issue Date: May 2, 2006

Application No. 09/803,081

Filed: March 8, 2001

Patentee(s): John Reagan, et. al.

**NOTICE** 

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on August 30, 2010.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby <u>ACCEPTED</u>. Therefore, status as a small entity has been removed and any future fees submitted must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-

Petitions Examiner

Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

ERICSSON INC. 6300 LEGACY DRIVE M/S EVR 1-C-11 PLANO TX 75024

MAILED
NOV 1 6 2010
OFFICE OF PETITIONS

In re Application of

Janez Skubic et al.

Application No. 09/803,210

Filed: March 08, 2001

Attorney Docket No. P14024US2

**DECISION ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 19, 2006, to revive the above-identified application. The delay in rendering a decision on this petition is regretted.

## The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 05, 2005. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A two (2) - month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is October 06, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$790, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1500; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that

such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2145 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Ramesh Krishnamurthy

Petitions Examiner

Office of Petitions

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Paper No. 9

Richard D. Pollak 3133 Via de Caballo Encinitas CA 92024

In re Patent No. 6,635,309 Issued: October 21, 2003 Application No.: 09/803,218 Filing Date: March 12, 2001 Attorney Docket No. **RDP001U**  MAILED

FEB 182011

OFFICE OF PETITIONS

: DECISION ON PETITION : UNDER 37 CFR 1.378(c) AND : REQUEST FOR INFORMATION

This is a decision on the petition, filed February 1, 2011, to reinstate the above-cited patent pursuant to 37 CFR 1.378(c). This is also a request for information in response to the petition under 37 CFR 1.378(b), filed February 1, 2011, to reinstate the above-cited patent.

The petition under 37 CFR 1.378(c) is **DISMISSED**.

The above-identified patent issued on October 21, 2003. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the 3.5-year maintenance fee expired at midnight on October 21, 2007.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be filed with twenty-four months after the expiration of the six month grace period provided in 37 CFR 1.362(e) and be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). The petition was not filed within the twenty-four month period following the expiration of the patent. This period expired at midnight on October 21, 2009. The twenty-four month period for filing a petition under 37 CFR 1.378(c) is a statutory requirement and cannot be waived or suspended.

The petition is dismissed, accordingly.

The amount of \$1,640.00 that petitioner paid for the surcharge for the petition under 37 CFR 1.378(c) will be refunded, in due course.

Petitioner will also be refunded \$490.00 because the 3.5 year maintenance fee for a small entity (as petitioner declares he is) is \$490.00, not 980.00. The overpayment of \$490.00 will be refunded, accordingly.

### REQUEST FOR INFORMATION

This is a request for information in response to the petition under 37 CFR 1.378(b), filed February 1, 2011, to reinstate the above-cited patent.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petition under 37 CFR 1.378(b) filed February 1 2011. No additional fees are due.

Petitioner is required to address the following points:

- A successful petition under 37 CFR 1.378(b) must affirmatively identify the cause of the delay in paying the maintenance fee and provide a statement from every person with first-hand knowledge of the circumstances surrounding the delay in paying the maintenance fee. It appears that petitioner is asserting that the Mr. Pollack was solely responsible for tracking and paying the maintenance fee and that Mr. Pollack's health prevented him from timely paying the maintenance fee. This is merely an inference, however. Petitioner must affirmatively state who was responsible for tracking and paying the maintenance fee. Petitioner must provide statements from any person who may have been charged with paying the maintenance fee and statements from any person with first-hand knowledge of the circumstances surrounding the failure to pay the maintenance fees.
- It is noted that petitioner states that petitioner discovered the patent was expired in 2009. Yet, the patent expired in October 2007. A grantable petition under 37 CFR 1.378(b) requires that petition establish that the entire delay—from the date the patent expired until the filing of a grantable petition—was unavoidable. Petitioner has not made any argument as to the period of delay between October 2007 and 2009. 37 CFR 1.378(b)(3) sets forth that a petition submitted under this portion of the Code of Federal Regulations must include a showing which is described as follows:

A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Petitioner must, therefore, describe the steps that were in place to ensure that the maintenance fee was timely paid. This showing would include an explanation of who was responsible for paying tracking and paying the maintenance fee and the method this person, or entity, used for tracking the maintenance fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Commissioner for Patent

Mail Stop Petitions

Box 1450

Alexandria, VA 22313-1460

By facsimile:

(571) 273-8300

Attn: Office of Petitions

A courtesy copy of this decision is being mailed to the address cited on the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

# /Kenya A. McLaughlin/

Kenya A. McLaughlin Petition Attorney Office of Petitions

ce: Don E. Erickson 7668 El Camino Real Suite 104 #627 Carlsbad, CA 92009



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

Richard D. Pollak 3133 Via de Caballo Encinitas CA 92024

MAILED

In re Patent No. 6,635,309

Issued: October 21, 2003

Application No.: 09/803,218 Filing Date: March 12, 2001

Attorney Docket No. RDP001U

APR 25 2011

: ON PETITION OFFICE OF PETITIONS

This is responsive to the Response to Request for Information filed April 6, 2011, and a decision on the petition under 37 CFR 1.378(b), filed February 1, 2011, to reinstate the above-cited patent.

The petition is dismissed.

The above-identified patent issued on October 21, 2003. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the 3.5-year maintenance fee expired at midnight on October 21, 2007.

A grantable petition under 37 CFR 1.378(b) must be accompanied by a showing to the satisfaction of the Commissioner that the entire delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was unavoidable. The showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.378(b).

### **Opinion**

Petitioner must establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.'

<sup>&</sup>lt;sup>1</sup>The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard. 35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee . . . at any time . . . if the delay is shown to the satisfaction of the Commissioner to have been unavoidable." (emphasis added).

<sup>&</sup>quot;In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of those provisions is entitled to considerable deference." Rydeen v. Quigg, 748 F. Supp. 900, 904, 16 U.S.P.Q2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion Rule 36), 937 F.2d 623 (Fed Cir. 1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d agencys' interpretation of a statute it administers is entitle to deference"); see also Chevron U.S.A. Inc., v. Natural Resources Defense Counsil, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute s silent or

However, "[t]he question of whether an applicant's delay in prosecuting an application was unavoidable [will]be decided on a case-by-case basis, taking all of the facts and circumstances into account."

Nonawarness of the content of, or misunderstanding of PTO statutes, PTO rules, the MPEP, or the Official Gazette notices does not constitute unavoidable delay. The statute requires a "showing" by petitioner, therefore; petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Petitioner is responsible for possessing knowledge of the need to pay maintenance fees and the due dates for such fees, Petitioner is responsible for instituting a reliable docketing system to remind him or her when maintenance fees become due.

Petitioner is responsible for having knowledge of the need to pay maintenance fees and knowing when the fees are due.<sup>4</sup> The Office has no duty to notify a patentee of the requirement to pay maintenance fees or to notify patentee when a maintenance fee is due.<sup>5</sup> Even if the Office were required to provide notice to

ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."))

"The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F. 3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1781 (Fed Cir. 1995) (Citing In repatent No. 4,409, 763, 7 U.S.P.Q.2d BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F. 2d 533, 538, 213 U.S.P. Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat 31, 32-33 (1887)).

<sup>3</sup>See Smith v. Mossinghoff, 671 F. 2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable "delay"); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D.D.C. 1985) (plaintiffs, through their counsel's action, or their own, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

<sup>4</sup>Nonawarness of PTO statutes, PTO rules, the MPEP, or Official Gazette notices, which state maintenance fee amounts and dates they are due does not constitute unavoidable delay. See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. \*BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D.D.C. 1985) (Plaintiffs, through their counsel's actions, or their own must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

Petitioner must act as a reasonable and prudent person in relation to his most important business. Upon obtaining the patent, a reasonable and prudent person, in relation to his most important business, would become familiar with the legal requirements of that business, in this case, the requirement to pay maintenance fees. In addition, a reasonable and prudent individual would read the patent itself and thereby become aware of the need to pay maintenance fees and the fact that such fee amounts are sometimes changed by law or regulation.

<sup>&</sup>lt;sup>2</sup>Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

<sup>&</sup>lt;sup>5</sup>Congress expressly conditioned §§ 133 and 151 [of the United States Code] on a specific type of notice, while no such notice requirements are written into § 41(c) . . . [T]he Commissioner's no timely-notice interpretation." Ray v. Comer, 1994 U.S. Dist. LEXIS 21478, 8-9 (1994), aff'd on other grounds Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995) (Citing

applicant of the existence of maintenance fee requirements, such notice is provided by the patent itself.6

A reasonable and prudent person, aware of the existence of maintenance fees, would not rely on maintenance fee reminders or on memory to remind him or her when payments would fall due several years in the future. Instead, such an individual would implement a reliable and trustworthy tracking system to keep track of the relevant dates.<sup>7</sup> The individual would also take steps to ensure that the patent information was correctly entered into the tracking system.

### Application of the unavoidable standard to the present facts

In the instant petition, petitioner argues that the above-cited patent should be reinstated because the delay in paying the 3.5-year maintenance fee was unavoidable and resulted from the failure of petitioner's prior legal counsel to inform patentee of the requirement to pay maintenance fees on the patent. Petitioner also argues that the patentee's ill health prevented patentee from filing a timely petition under 37 CFR 1.378(c).

Petitioner's arguments have been considered but are not persuasive relative to establishing unavoidable delay in paying the maintenance fee. Section 2590 of the *Manual of Patent Examining Procedure* (MPEP) specifically states, in pertinent part, that:

... the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees

Rydeen v. Quigg, 748 F. Supp. 900, 905 (1990), Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 81 L. ed. 2d 694, 104 S. Ct. 2778 (1984)). "The Court concludes as it did in Rydeen, that as a constitutional matter, 'plaintiff was not entitled to any notice beyond publication of the statute." Id. at 3 (citing Rydeen v. Quigg, 748 F. Supp. at 906, Texaco v. Short, 454 U.S. 516, 536, 70 L. Ed. 2d 738, 102 S. Ct. 781 (1982)).

The Patent Office, as a courtesy tries to send maintenance fee reminders and notices of patent expiration to the address of record. However, the failure to receive the reminder notice, and the lack of knowledge of the requirement to pay the maintenance fee, will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. See MPEP 2575, 2540, 2590. Petitioner does not have a right to a personalized notice that this patent will expire if a certain maintenance fee is not paid, as the publication of the statute was sufficient notice. See Rydeen v. Quigg, 748 F. Supp. 900, 907 (1990). the ultimate responsibility for keeping track of maintenance fee states lies with the patentee, not the USPTO. Since the mailing of Notices by the Office is completely discretionary and not a requirement imposed by Congress, accepting an argument that failure to receive a Notice is unavoidable delay would result in all delays being unavoidable should the Office discontinue the policy. All petitions could allege non-receipt of the reminder, and therefore all petitions could be granted. This was clearly not the intent of Congress in the creation of the unavoidable standard.

<sup>6</sup>See Ray v. Lehman, 55 F.3d 606, 610; 34 USPQ2d 1786, 1789 (Fed. Cir. 1995). The Letters of Patent contain a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980. While it is unclear as to who was and is in actual possession of the patent, petitioner's failure to read the Notice does not vitiate the Notice, nor does the delay resulting from such failure to read the Notice establish unavoidable delay.

<sup>7</sup> 37 CFR 1.378(b)(3) precludes acceptance of a late maintenance fee for a patent unless a petitioner can demonstrate that steps were in place to monitor the maintenance fee. The federal Circuit has specifically upheld the validity of this regulation. Ray v. Lehman, 55 F.3d 606, 609; 34 USPQ2d (BNA) 1786 (Fed.Cir. 1995). In Ray v. Lehman, petitioner claimed that he had not known of the existence of the maintenance fees and therefore had no steps in place to pay such fees. The petitioner therefore argues that the PTO's regulation, 37 CFR 1.37(b)(3), supra, arguing that it 'creates a burden that goes well beyond what is reasonably prudent." We disagree, The PTOs' regulation merely sets forth how one is to prove that he was reasonably prudent, i.e., by showing what steps he took to ensure that the maintenance fee would be timely paid, and the steps taken in seeking to reinstate the patent. We do not see these requirements additional to proving unavoidable delay, but as the very elements of unavoidable delay." Id.

or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to ensure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a Maintenance fee from the patentee to the Office.

While the patentee's ignorance as to the requirement to pay the maintenance fees is regrettable, the failure to pay a maintenance fee based on the lack of knowledge of the need to pay it does not satisfy the unavoidable standard of 37 CFR 1.378(b). As illustrated by the relevant sections of the MPEP cited above and throughout this decision, the patentee's lack of knowledge of the need to pay a maintenance fee does not constitute unavoidable delay.

Petitioner has not expressly stated that it was the responsibility of petitioner's prior counsel to track and pay the maintenance fee. Notwithstanding, if petitioner is making this assertion petitioner is advised that a statement is required from all persons with direct knowledge of the cause of unavoidable delay. Section 2590 of the *Manual of Patent Examining Procedure* (MPEP) provides that, among other requirements, a petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

(C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

If prior counsel was responsible for tracking and paying the maintenance fees, petitioner is advised that that the inquiry as to whether the entire delay in paying the maintenance fee was unavoidable will necessarily include a focus on the actions, or inactions, of petitioner's prior counsel. Additionally, petitioner would need to establish that there was a business routine in place for tracking and paying the maintenance fee and that a failing in this routine resulted in non-payment of the maintenance fee.

Lastly, a successful petition under 37 CFR 1.378(b) requires that petitioner demonstrate that the entire delay in paying the maintenance fee—from the due date for the maintenance fee until the filing of a grantable petition—was unavoidable. Petitioner maintains that a portion of the delay was caused by petitioner's ill health. The renewed petition must be accompanied by documentary evidence corroborating petitioner's claim. This might include copies of medical records and/or a letter from the treating physician describing the severity of petitioner's illness. Petitioner must be careful to redact person information, such as social security numbers, account numbers and the like and this information may become public.

### **Petitioner's Current Options**

I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision.<sup>8</sup> The petition for reconsideration should be titled "Petition

for Reconsideration under 37 CFR 1.378(b)." Any petition for reconsideration for this decision must be accompanied by a non-refundable petition fee of \$400.00 as set forth in 37 CFR 1.17(h).

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. It is, therefore, extremely important that petitioner supply any and all relevant information and documentation with the request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence "to show" that the delay was unavoidable. If a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Petitioner may request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Commissioner for Patent

Mail Stop Petitions

Box 1450

Alexandria, VA 22313-1460

By facsimile:

(571) 273-8300

Attn: Office of Petitions

A reasonable and prudent person would not rely on maintenance fee reminders from the Office for two reasons. First, the Office has indicated that such reminders are a mere courtesy and has reserved the right to discontinue such reminders at any time. second, such reminders may be lost in the mail. A reasonable and prudent person, in regard to his most important business would not rely solely on reminders that the Office may or may not send which may or may not be lost in the mail.

<sup>&</sup>lt;sup>8</sup>No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is not a final agency action within the meaning of 5 U.S.C. § 704.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petition Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450

Alexandria, VA 22313-1450

MAILED

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OFFICE OF PETITIONS

Richard D. Pollak 3133 Via de Caballo Encinitas CA 92024

In re Patent No. 6,635,309

Issued: October 21, 2003

Application No.: 09/803,218 Filing Date: March 12, 2001

Attorney Docket No. RDP001U

ON PETITION

This is responsive to the "Petition for Suspension of Rules under 37 CFR 1.183—Request for Reconsideration of Decision on Petition under 37 CFR 1.378(e) and Petition to Accept an Unintentionally and/or Unavoidably Delayed Payment of a Maintenance Fee in Expired Patent under 37 CFR 1.378(b)/(c)" filed June 23, 2011.

The petition under 37 CFR 1.183 is dismissed.

The petition under 37 CFR 1.378(b)/(e) is also dismissed.

## TREATMENT UNDER 37 CFR 1.183

The above-identified patent issued on October 21, 2003. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the 3.5-year maintenance fee expired at midnight on October 21, 2007.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be filed with **twenty-four months** after the expiration of the six month grace period provided in 37 CFR 1.362(e) and be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). The petition was not filed within the twenty-four month period following the expiration of the patent. This period expired at midnight on October 21, 2009.

The twenty-four month period for filing a petition under 37 CFR 1.378(c) is a statutory requirement and cannot be waived or suspended. See 35 U.S.C. § 41(c). The petition under 37 CFR 1.183 is dismissed accordingly.

### TREATMENT UNDER 37 CFR 1.378(b)/(e)

It is noted that the instant petition did not address the deficiencies noted in the decision mailed April 25, 2011. Petitioner is afforded another opportunity to address these deficiencies. Otherwise, a decision on the petition will be made solely on the record as it exists presently.

A grantable petition under 37 CFR 1.378(b) must be accompanied by a showing to the satisfaction of the Commissioner that the entire delay in paying the required maintenance fee from the due date for the fee until the filing of a grantable petition pursuant to this paragraph was unavoidable. The showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.378(b).

# Petitioner must establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.

However, "[t]he question of whether an applicant's delay in prosecuting an application was unavoidable [will]be decided on a case-by-case basis, taking all of the facts and circumstances into account."

Nonawarness of the content of, or misunderstanding of PTO statutes, PTO rules, the MPEP, or the Official Gazette notices does not constitute unavoidable delay. The statute requires a "showing" by petitioner, therefore; petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Petitioner is responsible for possessing knowledge of the need to pay maintenance fees and the due dates for such fees, Petitioner is responsible for instituting a reliable docketing system to remind him or her when maintenance fees become due.

Petitioner is responsible for having knowledge of the need to pay maintenance fees and knowing when the fees are due.<sup>3</sup> The Office has no duty to notify a patentee of the requirement to pay maintenance fees or to notify patentee when a maintenance fee is due.<sup>4</sup> Even if the Office were required to provide notice to

Petitioner must act as a reasonable and prudent person in relation to his most important business. Upon obtaining the patent, a reasonable and prudent person, in relation to his most important business, would become familiar with the legal requirements of

ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."))

<sup>&</sup>quot;The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F. 3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1781 (Fed Cir. 1995) (Citing In repatent No. 4,409, 763, 7 U.S.P.Q.2d BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F. 2d 533, 538, 213 U.S.P. Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat 31, 32-33 (1887)).

<sup>&</sup>lt;sup>1</sup>Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

<sup>&</sup>lt;sup>2</sup>See Smith v. Mossinghoff, 671 F. 2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable "delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D.D.C. 1985) (plaintiffs, through their counsel's action, or their own, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

<sup>&</sup>lt;sup>3</sup>Nonawarness of PTO statutes, PTO rules, the MPEP, or Official Gazette notices, which state maintenance fee amounts and dates they are due does not constitute unavoidable delay. <u>See Smith v. Mossinghoff</u>, 671 F.2d 533, 538, 213 U.S.P.Q. \*BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)); <u>Vincent v. Mossinghoff</u>, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D.D.C. 1985) (Plaintiffs, through their counsel's actions, or their own must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

applicant of the existence of maintenance fee requirements, such notice is provided by the patent itself.5

A reasonable and prudent person, aware of the existence of maintenance fees, would not rely on maintenance fee reminders or on memory to remind him or her when payments would fall due several years in the future. Instead, such an individual would implement a reliable and trustworthy tracking system to keep track of the relevant dates.<sup>6</sup> The individual would also take steps to ensure that the patent information was correctly entered into the tracking system.

### Application of the unavoidable standard to the present facts

In the instant petition, petitioner argues that the above-cited patent should be reinstated because the delay in paying the 3.5-year maintenance fee was unavoidable and resulted from the failure of petitioner's prior legal counsel to inform patentee of the requirement to pay maintenance fees on the patent. Petitioner also argues that the patentee's ill health prevented patentee from filing a timely petition under 37 CFR 1.378(c).

that business, in this case, the requirement to pay maintenance fees. In addition, a reasonable and prudent individual would read the patent itself and thereby become aware of the need to pay maintenance fees and the fact that such fee amounts are sometimes changed by law or regulation.

<sup>4</sup>Congress expressly conditioned §§ 133 and 151 [of the United States Code] on a specific type of notice, while no such notice requirements are written into § 41(c) . . . [T]he Commissioner's no timely-notice interpretation." Ray v. Comer, 1994 U.S. Dist. LEXIS 21478, 8-9 (1994), aff'd on other grounds Ray v. Lehman, 55 F.3d 606, 34 USPQ2d 1786 (Fed. Cir. 1995) (Citing Rydeen v. Quigg, 748 F. Supp. 900, 905 (1990), Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 81 L. ed. 2d 694, 104 S. Ct. 2778 (1984)). "The Court concludes as it did in Rydeen, that as a constitutional matter, 'plaintiff was not entitled to any notice beyond publication of the statute." Id. at 3 (citing Rydeen v. Quigg, 748 F. Supp. at 906, Texaco v. Short, 454 U.S. 516, 536, 70 L. Ed. 2d 738, 102 S. Ct. 781 (1982)).

The Patent Office, as a courtesy tries to send maintenance fee reminders and notices of patent expiration to the address of record. However, the failure to receive the reminder notice, and the lack of knowledge of the requirement to pay the maintenance fee, will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office. See MPEP 2575, 2540, 2590. Petitioner does not have a right to a personalized notice that this patent will expire if a certain maintenance fee is not paid, as the publication of the statute was sufficient notice. See Rydeen v. Quigg, 748 F. Supp. 900, 907 (1990). the ultimate responsibility for keeping track of maintenance fee states lies with the patentee, not the USPTO. Since the mailing of Notices by the Office is completely discretionary and not a requirement imposed by Congress, accepting an argument that failure to receive a Notice is unavoidable delay would result in all delays being unavoidable should the Office discontinue the policy. All petitions could allege non-receipt of the reminder, and therefore all petitions could be granted. This was clearly not the intent of Congress in the creation of the unavoidable standard.

<sup>5</sup>See Ray v. Lehman, 55 F.3d 606, 610; 34 USPQ2d 1786, 1789 (Fed. Cir. 1995). The Letters of Patent contain a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980. While it is unclear as to who was and is in actual possession of the patent, petitioner's failure to read the Notice does not vitiate the Notice, nor does the delay resulting from such failure to read the Notice establish unavoidable delay.

<sup>6</sup> 37 CFR 1.378(b)(3) precludes acceptance of a late maintenance fee for a patent unless a petitioner can demonstrate that steps were in place to monitor the maintenance fee. The federal Circuit has specifically upheld the validity of this regulation. Ray v. Lehman, 55 F.3d 606, 609; 34 USPQ2d (BNA) 1786 (Fed.Cir. 1995). In Ray v. Lehman, petitioner claimed that he had not known of the existence of the maintenance fees and therefore had no steps in place to pay such fees. The petitioner therefore argues that the PTO's regulation, 37 CFR 1.37(b)(3), supra, arguing that it 'creates a burden that goes well beyond what is reasonably prudent." We disagree, The PTOs' regulation merely sets forth how one is to prove that he was reasonably prudent, i.e., by showing what steps he took to ensure that the maintenance fee would be timely paid, and the steps taken in seeking to reinstate the patent. We do not see these requirements additional to proving unavoidable delay, but as the very elements of unavoidable delay." Id.

Petitioner's arguments have been considered but are not persuasive relative to establishing unavoidable delay in paying the maintenance fee. Section 2590 of the *Manual of Patent Examining Procedure* (MPEP) specifically states, in pertinent part, that:

... the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to ensure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a Maintenance fee from the patentee to the Office.

While the patentee's ignorance as to the requirement to pay the maintenance fees is regrettable, the failure to pay a maintenance fee based on the lack of knowledge of the need to pay it does not satisfy the unavoidable standard of 37 CFR 1.378(b). As illustrated by the relevant sections of the MPEP cited above and throughout this decision, the patentee's lack of knowledge of the need to pay a maintenance fee does not constitute unavoidable delay.

Petitioner has not expressly stated that it was the responsibility of petitioner's prior counsel to track and pay the maintenance fee. Notwithstanding, if petitioner is making this assertion petitioner is advised that a statement is required from all persons with direct knowledge of the cause of unavoidable delay. Section 2590 of the *Manual of Patent Examining Procedure* (MPEP) provides that, among other requirements, a petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

(C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

If prior counsel was responsible for tracking and paying the maintenance fees, petitioner is advised that that the inquiry as to whether the entire delay in paying the maintenance fee was unavoidable will necessarily include a focus on the actions, or inactions, of petitioner's prior counsel. Additionally, petitioner would need to establish that there was a business routine in place for tracking and paying the maintenance fee and that a failing in this routine resulted in non-payment of the maintenance fee.

Lastly, a successful petition under 37 CFR 1.378(b) requires that petitioner demonstrate that the entire delay in paying the maintenance fee—from the due date for the maintenance fee until the filing of a grantable petition—was unavoidable. Petitioner maintains that a portion of the delay was caused by petitioner's ill health. The renewed petition must be accompanied by documentary evidence corroborating petitioner's claim. This might include copies of medical records and/or a letter from the treating physician describing the severity of petitioner's illness. Petitioner must be careful to redact person information, such as social security numbers, account numbers and the like and this information may become public.

### I. Petitioner may file a request for reconsideration.

If reconsideration of this decision is desired, a petition for reconsideration must be filed within TWO (2) MONTHS from the mail date of this decision.<sup>7</sup> The petition for reconsideration should be titled "Petition for Reconsideration under 37 CFR 1.378(b)." If not previously paid, any petition for reconsideration for this decision must be accompanied by a non-refundable petition fee of \$400.00 as set forth in 37 CFR 1.17(h).

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. It is, therefore, extremely important that petitioner supply any and all relevant information and documentation with the request for reconsideration. The Commissioner's decision will be based solely on the administrative record in existence. Petitioner should remember that is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence "to show" that the delay was unavoidable. If a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

### II. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Petitioner may request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Commissioner for Patent

**Mail Stop Petitions** 

Box 1450

Alexandria, VA 22313-1460

By facsimile:

(571) 273-8300

Attn: Office of Petitions

A reasonable and prudent person would not rely on maintenance fee reminders from the Office for two reasons. First, the Office has indicated that such reminders are a mere courtesy and has reserved the right to discontinue such reminders at any time. second, such reminders may be lost in the mail. A reasonable and prudent person, in regard to his most important business would not rely solely on reminders that the Office may or may not send which may or may not be lost in the mail.

<sup>&</sup>lt;sup>7</sup>No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is not a final agency action within the meaning of 5 U.S.C. § 704.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petition Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

exandria, VA 22313-1450 www.uspto.gov

MAILED

Richard D. Pollak 3133 Via de Caballo Encinitas CA 92024

NOV 212011

OFFICE OF PETITIONS

In re Patent No. 6,635,309

Issued: October 21, 2003 Application No.: 09/803,218

Filing Date: March 12, 2001

Attorney Docket No. RDP001U

REQUEST FOR INFORMATION

This is a request for information in response to the petition under 37 CFR 1.378(b), filed October 3, 2011, to reinstate the above-cited patent.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petitions under 37 CFR 1.378(b) filed February 1, 2011, June 23, 2011, and October 3, 2011. No additional fees are due.

The above-identified patent issued on October 21, 2003. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the 3.5-year maintenance fee expired at midnight on October 21, 2007.

Petitioner is required to address the following points:

- Petitioner states that, prior to September 19, 2009, petitioner intended to file a petition under 37 CFR 1.378(c) to reinstate that above-cited patent. However, because of a series of misfortunes that befell petitioner (include memory loss), petitioner was not able to timely file the petition. Implicit in this assertion is that petitioner realized prior to September 2009, that the patent was expired. A successful petition under 37 CFR 1.378(b) requires that petitioner establish that the entire delay was unavoidable—from the due date for the maintenance fee (October 21, 2007) until the filing of the grantable petition. Accordingly, petitioner is required to affirmatively state if petitioner recalls how and when petitioner discovered first discovered, i.e., pre-September 2009, that the patent was expired and the steps petitioner may have taken to reinstate the patent prior to September 19, 2009.
- The statement of Dr. George Groth regarding petitioner's memory loss is noted. It is requested that petitioner clarify the medical speciality of Dr. Groth.
- It is noted that petitioner states that petition suffered a heart attack in December 2009. Petitioner is required to establish that ill health related to the heart attack or other illness existed from December 2009 until February 2011, and that petitioners' health was so poor as to prevent petitioner from taking steps to reinstate the patent.
- The hospital invoices related to petitioner's hospitalization following the heart attach are noted. If petitioner is asserting that ensuing financial hardship played a part in preventing petitioner from trying to reinstate the patent, petitioner must establish that such financial hardship existed by providing copies of bank statements, tax returns, accountant notes, or other financial documents that demonstrate that during the relevant period petitioner did not have the means to

- pay the fees to reinstate the patent. Petitioner should redact any personal identifiers from these documents as such may be viewable by the public.
- It is noted that petitioner again argues in the petition filed October 3, 2011, that petitioner's petition under 37 CFR 1.378(c) should be considered by waiver of applicable rules under 37 CFR 1.183. Petitioner is again advised that this argument is unavailing. The petition under 37 CFR 1.378(c) was not filed within two years of the date the patent expired. Further, the requirement that the petition under 37 CFR 1.378(c) be filed within two years of the expiration of the patent is a requirement of the governing statues which the USPTO has no authority to waive. If petitioner again chooses to assert this argument, petitioner will be charged \$400.00 for the petition fee required for a petition under 37 CFR 1.183 and a denial decision, which is a final agency action, issued on the petition under 37 CFR 1.183.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Commissioner for Patent

Mail Stop Petitions

Box 1450

Alexandria, VA 22313-1460

By facsimile:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin Petition Attorney Office of Petitions PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-D	Docket No	umber (if applicable)
6,551,312	2003-04-22	09/803,284	2001-03-09	1415-P005	5001
of the actual U.S. a 1.366(c) and (d).					patent number and (2) the application number sociated with the correct patent. 37 CFR
SMALL ENTITY	ims, or has previously	claimed, small ent	ity status. See 3	CFR 1.27.	
LOSS OF ENTITL	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS all entity status. S	See 37 CFR 1.27	)	
NOT Small Entity			Small Entity		
Fee	Code (1551)		Fee 3 ½ ye	Code (2551)	
7 ½ year	(1552)		7 ½ ye	(2552)	
11 ½ year	(1553)		O 11 ½ y	ar (2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be pai	as a condition	of accepting unintentionally delayed payment
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.					
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF TH	MAINTENAN	CE FEE TO THIS PATENT WAS
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED					
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNA	ORIES	
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
$\circ$	or agent registered to	oractice before the	Patent and Trac	mark Office	
A sole patentee					
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.					
A joint patentee; all of whom are signing this e-petition					
The assignee of record of the entire interest					

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/EW64327/	Date (YYYY-MM-DD)	2002-02-03	
Name	Ellen Wei	Registration Number	64327	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6551312

Issue Date:

April 22,2003

Application No. 09803284

Filed:

March 9,2001

Attorney Docket No.

This is a decision on the electronic petition, filed

February 3,2012

,under 37 CFR 1.378(c)

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 3,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Davidson, Davidson & Kappel, LLC 485 7th Avenue 14th Floor New York NY 10018

MAILED

JAN 2 4 2011

OFFICE OF PETITIONS

In re Patent No. 6,924,792

Issue Date: August 2, 2005

Application No. 09/803,445 : NOTICE

Filed: March 9, 2001

Attorney Docket No. RVJ-P6

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 9, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

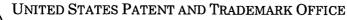
The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions cc:

Morey B. Wildes Pearl Cohen Zedek Latzer, LLP 1500 Broadway, 12<sup>th</sup> Floor New York, NY 10036





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WILMERHALE/BOSTON 60 STATE STREET BOSTON MA 02109

MAILED
SEP 192011
OFFICE OF PETITIONS

In re Patent No. RE39,938

Issue Date: December 18, 2007

Application No. 09/803,452

Filed: March 8, 2001

Attorney Docket No. 108195.128

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed August 16, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

### The petition is **GRANTED**.

This patent expired on March 10, 2011 for failure to pay the 11 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

A courtesy copy of this decision is being mailed to Kendal M. Sheets, the practitioner who filed the petition. However, until otherwise instructed, all future correspondence regarding this patented file will be directed solely to the above-noted correspondence address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

The patent file is being forwarded to Files Repository.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: KENDAL M. SHEETS

CPA GLOBAL NORTH AMERICA 2318 MILL ROAD, 12<sup>TH</sup> FLOOR ALEXANDRIA, VA 22101

EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)	
6,397,812	2002-06-04	09/803,557	2001-03-12	E-131	
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	application leading to is	suance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
	ims, or has previously o ————————————————————————————————————		ity status. See 37 C	-R 1.27.	
	o longer entitled to sm				
NOT Small Entity			Small Entity		
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)	
7 ½ year	(1552)		● 7½ year	(2552)	
	(1553)		○ 11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment	
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.					
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) R REINSTATED	EQUEST THAT THE [	DELAYED PAYME	NT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES	
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."					
I certify, in accordance with 37 CFR 1.4(d)(4) that I am					
An attorney or agent registered to practice before the Patent and Trademark Office					
A sole patentee					
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.					
A joint patentee; all of whom are signing this e-petition					
The assignee of record of the entire interest					

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/james h walters/	Date (YYYY-MM-DD)	2011-03-11	
Name	James H. Walters	Registration Number	35731	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6397812 Issue Date:

June 4,2002

Application No. 09803557

March 12,2001 Filed:

Attorney Docket No.

March 11,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 11,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 Aww useto gov

RYAN MASON & LEWIS LLP 1300 POST ROAD SUITE 205 FAIRFIELD CT 06824

# MAILED

DEC 142011

## OFFICE OF PETITIONS

In re Application of : Haddad : ON PETITION Filed: March 12, 2001 : Attorney Docket No. 1 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 2, 2011.

The petition under 37 CFR 1.181 is **GRANTED**.

The holding of abandonment is WITHDRAWN.

The above-identified application was held abandoned for failure to timely file a court appeal of the Board Decision mailed on October 28, 2011. The Office mailed a Notice of Abandonment on November 2, 2011, noting that the period for seeking court review of the decision had expired.

37 CFR 1.304(a)(1) states in relevant part:

The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is **two months** from the date of the decision of the Board of Patent Appeals and Interferences (emphasis added).

In view thereof, it is obvious that the Notice of Abandonment was prematurely mailed.

The application is being forwarded to Group Art Unit 2611.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

CH G

Cliff Congo Petitions Attorney Office of Petitions

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6,401,244	2002-06-11	09805793	2001-03-13	40027.00.0015			
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).  SMALL ENTITY    X   Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.							
LOSS OF ENTITL	EMENT TO SMALL EN no longer entitled to sm	ITITY STATUS		7111.27.			
NOT Small Entity			Small Entity				
Fee	Code		Fee	Code			
○ 3 ½ year	(1551)		3 ½ year	(2551) (2552)			
7 ½ year	(1552)		● 7½ year ● 11½ yea	` '			
	(1553)		11/2 yea	(2000)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid a	s a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED							
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES			
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."							
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
An attorney or agent registered to practice before the Patent and Trademark Office							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; all of whom are signing this e-petition							
The assignee of record of the entire interest							

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature /Robert S. Rigg/		Date (YYYY-MM-DD)	2011-03-14			
Name	Robert S. Rigg	Registration Number	36991			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6401244

Issue Date:

June 11,2002

Application No. 09805793

Filed:

March 13,2001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Attorney Docket No. 00653368

This is a decision on the electronic petition, filed

March 14,2011

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

March 14,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C ONE FINANCIAL CENTER BOSTON, MA 02111

MAILED

APR 202011

OFFICE OF PETITIONS

In re Application of

Kidd et al.

Application No. 09/805,839

Filed: March 13, 2001

Attorney Docket No. 21275-001

DECISION ON PETITION TO WITHDRAW

FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 9, 2011.

The request is APPROVED.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by David E. Johnson on behalf of all the practitioners of record associated with Customer Number 30623.

Customer Number 30623 has been withdrawn as attorney from record. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There is an outstanding Final Office action mailed March 17, 2011 that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley Petitions Examiner Office of Petitions

cc: GEOFFREY L. KIDD

NATIONAL CANCER INSTITUTE, NATION INSTITUTES OF HEALTH

**BUILDING 31, ROOM 4A34, MSC 2471** 

BETHESDA, MD 20892



# United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NUMBER

FILING OR 371(C) DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

09/805,839

03/13/2001

Geoffrey L. Kidd

21275-001

CONFIRMATION NO. 3781
POWER OF ATTORNEY NOTICE

30623 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C ONE FINANCIAL CENTER BOSTON, MA 02111



Date Mailed: 04/19/2011

### NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/09/2011.

• The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/atkelley-collier/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7137126

Issue Date: November 14,2006

Application No. 09806565 :DECISION GRANTING PETITION :UNDER 37 CFR 1.378(c)

Filed: July 2,2001

Attorney Docket No. YOR9-1999-01

This is a decision on the electronic petition, filed January 10,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
7137126	2006-11-14	09806565	2001-07-02	YOR9-1999-01		
of the actual U.S. a 1.366(c) and (d).				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR		
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.		
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	NTITY STATUS nall entity status.	See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)		
○ 7½ year	(1552)		○ 7½ year	(2552)		
○ 11 ½ year	r (1553)		11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) F REINSTATED	REQUEST THAT THE	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES		
	states: "Any petition undifice, or by the patentee			ttorney or agent registered to practice before the Patent st."		
I certify, in accordance with 37 CFR 1.4(d)(4) that I am						
An attorney or agent registered to practice before the Patent and Trademark Office						
○ A sole patentee						
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are s	gning this e-petition	on			
The assignee of record of the entire interest						

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature /Kendal M. Sheets/		Date (YYYY-MM-DD)	2011-01-10			
Name	Kendal M. Sheets	Registration Number	47077			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

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- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a
  court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement
  negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON VA 22203

MAILED
MAY 262011
OFFICE OF PETITIONS

In re Patent No. 6,481,957

Issue Date: November 19, 2002

Application No. 09/807,026 : LETTER

Filed: April 9, 2001

Patentee: Bruce I. Brill

The above-identified patent has been referred to the Office of Petitions for consideration of your communication filed April 11, 2011. Since the requisite maintenance fee and surcharge did not accompanied the communication, the communication is being treated as a request for information regarding the procedures for accepting delayed payment of the maintenance fee and for reinstating the expired patent.

# UNAVOIDABLE DELAY

If the delayed payment of the maintenance fee was unavoidable, a petition can be filed under 37 CFR 1.378(b). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely, (2) payment of the appropriate maintenance fee, unless previously submitted, which in this case is \$1,240, and (3) payment of the \$700 surcharge.

The showing above must enumerate the steps taken to ensure timely payment of the maintenance fee as well as the reasons why payment was not timely made. All the causes which contributed to the failure to timely pay the maintenance fee must be presented and supported with appropriate evidence. The showing must enumerate the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Statements from all persons who contributed to the delay are also required. Further, petitioner should identify the party responsible for making the payment.

### UNINTENTIONAL DELAY

If the delayed payment of the maintenance fee was unintentional, a petition can be filed under 37 CFR 1.378(c). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(c) must be filed within twenty four months from the end of the six month grace period (e.g., the expiration date of the patent) and be accompanied by (1) a statement that the delay was unintentional, (2) payment of the appropriate maintenance fee, unless previously submitted, which in this case is \$1,240, and (3) payment of the \$1640 surcharge.

The file does not indicate a change of address has been submitted, although the address given on the present communication differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. If patentee no longer wishes to be represented by the representative of record, then a revocation of the power of attorney or patent agent should be submitted.

Patentee is advised that the mere filing of a power of attorney and/or change of correspondence address will not affect the fee address. Therefore, if patentee desires to receive future correspondence regarding any Maintenance Fee Reminder which  $\underline{\text{may}}$  be mailed regarding maintenance fees for the above-identified patent, a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) must also be submitted.

A courtesy copy of this letter is being mailed to the patentee herein; however, unless directed otherwise, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

Any petition with respect to reinstatement of this patent should be addressed as follows:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By hand:

Customer Service Window

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-8300

ATTN: Office of Petitions

By Internet: EFS-Web<sup>1</sup>

www.uspto.gov/ebc/efs help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

U.S. Patent No. 6,481,957

Page 3

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204. For applicant's convenience enclosed are the forms necessary for a petition to accept the delayed payment of the maintenance fee in an expired patent under the unintentional standards and the unavoidable standards.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

Enclosures:

Unavoidable Petition Form PTO/SB/65 Unintentional Petition Form PTO/SB/66

cc: BRUCE BRILL

c/o EFAR ELDAD NOKEDIM 90916

ISRAEL



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

Date: 04/08/11

Patent No.

: 6699694 B1

Ser. No.

: 09/807,063

Inventor(s)

: Buttcher, et al.

Issued

: March 02, 2004

Title

: Method for producing .alpha.-1,6-branched .alpha.-1,4-glucans from

sucrose

Docket No. : 0147-0222P

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based solely on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing incorrect or erroneous assignment data, before issuance of a Certificate of Correction, under 37 CFR 1.323 (see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481). This procedure is required at any time after the issue fee is paid, including after issuance of the patent.

In view of the foregoing, your request, in this mater, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

- A. the processing fee set forth in 37 CFR 1.17(i) (currently \$130);
- B. a statement that the failure to include the correct assignee name on the PTOL-85B was
- C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of the date the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

**Customer Service Window** 

Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314

By fax:

(571) 273-0025

ATTN: Office of Petitions

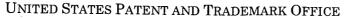
If a fee (currently \$100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch

(571) 272-3421 or (703) 305-8309

BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH VA 22040-0747

**LMN** 





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747 MAILED
JUL 28 2011
OFFICE OF PETITIONS

In re Patent No. 6,699,694

Issue Date: March 2, 2004

Application No. 09/807,063

Filed: June 11, 2001

Attorney Docket No. 0147-0222P

ON PETITION

This is a decision on the petition filed April 27, 2011, which is being treated as a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

### The petition is **DISMISSED**.

Petitioner requests an issuance of a certificate of correction to correct the assignee's name from PlantTec Biotechnologie and Max-Planck-Geselleschaft zur to "Bayer Bioscience GMBH and Max-Planck-Gesellschaft zur Forderung der Wissenschafter e.V".

37 CFR 3.81(b), effective June 25, 2004, reads:

After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter [emphasis added]. See also MPEP 1481.01.

A review of U.S. Patent and Trademark Office assignment records disclose that that a corrective assignment from Buttcher et al., to Bayer Bioscience GMBH and Max-Planck-Gesellschaft zur Forderung der Wissenschafter e.V. was recorded on March 24, 2011, which is **after the date of issuance of this patent**. Therefore, since the assignment was submitted for recordation after issuance of this patent, issuance of a certificate of correction would not be proper.

Telephone inquiries concerning this decision on petition should be directed to Alicia Kelley-Collier at (571) 272-6059.

/Carl Friedman/ Carl Friedman Petitions Examiner Office of Petitions

# SPE RESPONSE FOR CERTIFICATE OF CORRECTION

	OF LINES	FONSET OR CERTIFICATE OF CORRECTION
		Paper No.:20101025
DATE	: October 25, 2010	
TO SPE C	OF: ART UNIT 1642	
SUBJECT	: Request for Certific	ate of Correction on Patent No.: 6,867,180
A response	e is requested with respect	to the accompanying request for a certificate of correction.
Certificate	•	urn with file, within <b>7</b> days to: h - <b>ST (South Tower) 9A22</b> ) 305-8309
read as sho		ed, correcting Office and/or Applicant's errors, should the patent rection? No new matter should be introduced, nor should the scope or
Thank Yo	u For Your Assistance	Certificates of Correction Branch
-	est for issuing the abovesion on the appropriated box.	re-identified correction(s) is hereby:
$\boxtimes$	Approved	All changes apply.
	Approved in Part	Specify below which changes <b>do not</b> apply.
	Denied	State the reasons for denial below.
Comment	ts:	
		/Misook Yu/ Supervisory Patent Examiner.Art Unit 1642

# Best Available Copy

	SPE RESPONSE FO	R CERTIFICATE OF CO	RHECITOR		
DATE	10-27-11				
TO SPE OF	: ART UNIT <b>1643</b>		oos waad day o		
SUBJECT	: Request for Certificate of Correcti	on for Appl. No.: $\underline{09/807}$	<b>949</b> Pat	ent No.:	7713704
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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

IBM CORPORATION, T.J. WATSON RESEARCH CENTER P.O. BOX 218 YORKTOWN HEIGHTS, NY 10598

MAILED

JAN 182011

OFFICE OF PETITIONS

In re Application of Thomas D. Erickson, et al. Application No. 09/808,211 Filed: March 14, 2001

Attorney Docket No. YOR920000671US2

(8728-451)

**DECISION ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 9, 2010, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue and publication fees on or before December 18, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed September 18, 2009. Accordingly, the date of abandonment of this application is December 19, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of \$1510 and the publication fee of \$300, (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

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Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Office of Data Management at 571-272-4200.

This application is being referred to the Office of Data Management for processing into a patent.

Petitions Examiner
Office of Petitions

		SPE RESPO	ONSE FOR CEI	RTIFICATE OF CORRECT	TION			
	• )	110 2:0-	- YD		Paper No.: _			
	DATE	:		•				
	TO SPE OF	: 10.20-						
	SUBJECT	: Request for Certificate of	of Correction for	Appl. No.: 04/808	515 Patent No.: 706	353%		
	Please respo	and to this request fo	or a certificate	e of correction within 7	7 days.			
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		Approved		All changes apply.				
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

CHRISTOPHER C. WINSLADE SUITE 3400 500 WEST MADISON STREET CHICAGO IL 60661

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of Bennett, et al.

Application No. 09/808,722

Filed/Deposited: 14 March, 2001 Attorney Docket No. 00B012 **DECISION** 

This is a decision on the papers filed on 16 December, 2010, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. §1.181."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

# As to the Request to Withdraw the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181.

Petitioner appears <u>not</u> to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

# **BACKGROUND**

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due mailed on 24 August, 2010 with reply due under a non-extendable deadline on or before 24 November, 2010.

The application went abandoned by operation of law after midnight 24 November, 2010.

The Office mailed the Notice of Abandonment of 9 December, 2010.

On 15 December, 2010, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred that the Notice of Allowance/Allowability and Fees Due was mailed to an incorrect address. Petitioner went on to recite that another firm had incorrectly had filed a Notice of Change of Address, and thereafter requrested withdrawal of that change—however, the Office had failed to do so. What Petitioner conveniently failed to recite was that while the error described took place in February, 2007, thereafter the Office mailed on:

- 7 December, 2007, a non-final Office action;
- 7 March, 2008, an interview summary;
- 10 October, 2008, an interview summary;
- 5 March, 2009, a non-final Office action; and
- 27 November, 2009, a non-final Office action; and

although <u>all</u> of those mailings went to the address set forth—albeit erroneously—in February, 2007, for more than three (3) years <u>Petitioner</u> failed to submit a Notice of Change of Address to correct the error of which he was aware. Thus, for more than three (3) years <u>Petitioner appears to have accepted an erroneous address as his mailing address of record</u>, yet Petitioner now complains that the Office failed to correct the error. Notably, it was only upon his filing of the instant petition on 15 December, 2010, that Petitioner elected to file a Notice of Change of Address to correct the error of February 2007.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to non-receipt:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<sup>1</sup>

\*\*\*

A Petitioner unable to comply with and/or otherwise satisfy these requirements may wish to revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See:

http://www.uspto.gov/web/offices/pac/mpep/documents/0700\_711\_03\_c.htm#sect711.03c)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (see: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>2</sup>

See: MPEP §711.03(c) (I)(A).

<sup>&</sup>lt;sup>2</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

#### STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.<sup>3</sup>,<sup>4</sup>

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.<sup>5</sup>

# Allegations as to the Request to

<sup>&</sup>lt;sup>3</sup> See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an <u>unavoidable</u> delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under <u>Pratt</u>, and so cannot satisfy the test for diligence and due care. (By contrast, <u>unintentional</u> delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, <u>and</u> also, by definition, are not intentional.))

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

# Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

# CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is dismissed.

# **ALTERNATIVE VENUE**

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b). (See:

http://www.uspto.gov/web/offices/pac/mpep/documents/0700 711 03 c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay <u>must be filed promptly and such</u> <u>petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)</u>

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>6</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CHRISTOPHER C. WINSLADE SUITE 3400 500 WEST MADISON STREET CHICAGO IL 60661

MAILED
JUN 03 2011
OFFICE OF PETITIONS

In re Application of

Bennett, et al.

Application No. 09/808,722

Filed/Deposited: 14 March, 2001

Attorney Docket No. 00B012

**DECISION** 

This is a decision on the petition filed on 4 April, 2011, and supplemented on 25 May, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

The petition pursuant to 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision or any petition in the alternative is to be filed within two (2) months from the mail date of this decision. Note 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment," and/or "Renewed Petition under 37 C.F.R. §1.137(b)."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

# As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

Petitioner does not appear to have addressed properly the requirements under the rule. Any deficiencies must be overcome.

#### **BACKGROUND**

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due mailed on 24 August, 2010 with reply due under a non-extendable deadline on or before 24 November, 2010.

The application went abandoned by operation of law after midnight 24 November, 2010.

The Office mailed the Notice of Abandonment of 9 December, 2010.

On 15 December, 2010, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred that the Notice of Allowance/Allowability and Fees Due was mailed to an incorrect address. Petitioner stated that another firm had incorrectly had filed a Notice of Change of Address, and thereafter requested withdrawal of that change—however, the Office had failed to do so. What Petitioner conveniently failed to state was that while the error described took place in February, 2007, thereafter the Office mailed a non-final Office action on 7 December, 2007; and interview summary on 7 March, 2008, and again on 10 October, 2008, an interview summary; a non-final Office action on 5 March, 2009, and again on 27 November, 2009, a non-final Office action. Although all of those mailings went to the address set forth—albeit erroneously—in February, 2007, for more than three (3) years Petitioner failed to submit a Notice of Change of Address to correct the error of which he was aware. Thus, for more than three (3) years Petitioner accepted an erroneous address as his mailing address of record, yet Petitioner complained on 15 December, 2010, that the Office failed to correct the error, and it was only with that filing that Petitioner elected to file a Notice of Change of Address to correct the error of February 2007. The petition was dismissed on 22 February, 2011.

On 4 April, 2011, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with an averment of unintentional delay, and though he made the statement of unintentional delay, he apparently did not submit the petition fee or the reply in the form of fees due until he filed a supplement on 24 May, 2011. However, Petitioner also failed to properly sign the petition he submitted—his attempt at an electronic or S-signature ("/s/Ronald H. Spuhler" (sic)) was not in compliance with the Rules of Practice. (See: 37 C.F.R. §1.4.¹) Papers with improper signature are considered as unsigned, and cannot be considered by the Office. Thus, the petition must be dismissed.

The regulations at 37 C.F.R. §1.4 provide:

<sup>§ 1.4</sup> Nature of correspondence and signature requirements.

<sup>(</sup>a)Correspondence with the Patent and Trademark Office comprises:

<sup>(1)</sup>Correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents, orders for copies of records, transmission of assignments for recording, and the like, and

<sup>(2)</sup>Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of ex partereexaminations of patents in subpart D, §§ 1.501 to 1.570; of extension of patent term in subpart F, §§ 1.710 to 1.785; of inter partes reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of the Board of Patent Appeals and Interferences in part 41 of this title.

(b)Since each file must be complete in itself, a separate copy of every paper to be filed in a patent, patent file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The filing of duplicate copies of correspondence in the file of an application, patent, or other proceeding should be avoided, except in situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, or other proceeding.

(c)Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

(d)(1) Handwritten signature. Each piece of correspondence, except as provided in paragraphs (d)(2), (d)(3), (e) and (f) of this section, filed in an application, patent file, or other proceeding in the Office which requires a person's signature, must:

(i)Be an original, that is, have an original handwritten signature personally signed, in permanent dark ink or its equivalent, by that person; or

(ii)Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

(2)S-signature. An S-signature is a signature inserted between forward slash marks, but not a handwritten signature as defined by  $\S$  1.4(d)(1). An S-signature includes any signature made by electronic or mechanical means, and any other mode of making or applying a signature not covered by a handwritten signature of  $\S$  1.4(d)(1). Correspondence being filed in the Office in paper, by facsimile transmission as provided in  $\S$  1.6(d), or via the Office electronic filing system as an attachment as provided in  $\S$  1.6(a)(4), for a patent application, patent, or a reexamination proceeding may be S-signature signed instead of being personally signed (i.e., with a handwritten signature) as provided for in paragraph (d)(1) of this section. The requirements for an S-signature under this paragraph (d)(2) of this section are as follows.

(i)The S-signature must consist only of letters, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, or hyphens for punctuation, and the person signing the correspondence must insert his or her own S-signature with a first single forward slash mark before, and a second single forward slash mark after, the S-signature (e.g., /Dr. James T. Jones, Jr./); and

(ii)A patent practitioner (§ 1.32(a)(1)), signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2), must supply his/her registration number either as part of the S-signature, or immediately below or adjacent to the S-signature. The number (#) character may be used only as part of the S-signature when appearing before a practitioner's registration number; otherwise the number character may not be used in an S-signature.

(iii)The signer's name must be:

(A)Presented in printed or typed form preferably immediately below or adjacent the S-signature, and

(B)Reasonably specific enough so that the identity of the signer can be readily recognized.

(3) Forms. The Office provides forms to the public to use in certain situations to assist in the filing of correspondence for a certain purpose and to meet certain requirements for patent applications and pro

ceedings. Use of the forms for purposes for which they were not designed is prohibited. No changes to certification statements on the Office forms (e.g., oath or declaration forms, terminal disclaimer forms, petition forms, and nonpublication request forms) may be made. The existing text of a form, other than a certification statement, may be modified, deleted, or added to, if all text identifying the form as an Office form is removed. The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any Office form with text identifying the form as an Office form by a party, whether a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this chapter that the existing text and any certification statements on the form have not been altered other than permitted by EFS-Web customization.

(4) Certifications. (i) Section 11.18 certifications: The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this subchapter. Violations of § 11.18(b)(2) of this subchapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 11.18(c) of this subchapter. Any practitioner violating § 11.18(b) of this subchapter may also be subject to disciplinary action. See §§ 11.18(d) and 11.804(b)(9) of this subchapter.

(ii)Certifications as to the signature:

(A)Of another: A person submitting a document signed by another under paragraph (d)(2) of this section is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature.

(B)Self certification: The person inserting a signature under paragraph (d)(2) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature.

(C)Sanctions: Violations of the certifications as to the signature of another or a person's own signature, set forth in paragraphs (d)(4)(ii)(A) and (B) of this section, may result in the imposition of sanctions under § 11.18(c) and (d) of this chapter.

(e)Correspondence requiring a person's signature and relating to registration practice before the Patent and Trademark Office in patent cases, enrollment and disciplinary investigations, or disciplinary proceedings must be submitted with an original hand written signature personally signed in permanent dark ink or its equivalent by that person.

(f)When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

(g)An applicant who has not made of record a registered attorney or agent may be required to state whether assistance was received in the preparation or prosecution of the patent application, for which any compensation or consideration was given or charged, and if so, to disclose the name or names of the person or persons providing such assistance. Assistance includes the preparation for the applicant of the specification and amendments or other papers to be filed in the Patent and Trademark Office, as well as other assistance in such matters, but does not include merely making drawings by draftsmen or stenographic services in typing papers.

(h)Ratification/confirmation/evidence of authenticity: The Office may require ratification, confirmation (which includes submission of a duplicate document but with a proper signature), or evidence of authenticity of a signature, such as when the Office has reasonable doubt as to the authenticity (veracity) of the signature, e.g., where there are variations of a signature, or where the signature and the typed or printed name, do not clearly identify the person signing.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>2</sup>

# STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.<sup>3</sup>,<sup>4</sup>

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies

<sup>&</sup>lt;sup>2</sup> <u>See</u> supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. <u>See Changes to Patent Practice and Procedure</u>, 62 <u>Fed. Reg.</u> at 53160 and 53178, 1203 <u>Off. Gaz. Pat. Office</u> at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

<sup>&</sup>lt;sup>3</sup> See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.<sup>5</sup>

# As to Allegations of Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

As discussed above, it does not appear that Petitioner has satisfied the requirements under the rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II) as to a petition pursuant to 37 C.F.R. §1.137.

# **CONCLUSION**

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street

Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

<sup>&</sup>lt;sup>5</sup> In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>6</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

CHRISTOPHER C. WINSLADE SUITE 3400 500 WEST MADISON STREET CHICAGO IL 60661

MAILED

AUG 0 1 2011

OFFICE OF PETITIONS

In re Application of Bennett, et al.

Application No. 09/808,722

Filed/Deposited: 14 March, 2001 Attorney Docket No. 00B012 **DECISION** 

This is a decision on the petition filed on 14 June, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

### **BACKGROUND**

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due mailed on 24 August, 2010 with reply due under a non-extendable deadline on or before 24 November, 2010.

The application went abandoned by operation of law after midnight 24 November, 2010.

The Office mailed the Notice of Abandonment of 9 December, 2010.

On 15 December, 2010, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred that the Notice of Allowance/Allowability and Fees Due was mailed to an incorrect address. Petitioner stated that another firm had incorrectly had filed a Notice of Change of Address, and thereafter requested withdrawal of that change—however, the Office had failed to do so. What Petitioner conveniently failed to state was that while the error described took place in February, 2007, thereafter the Office mailed a non-final Office action on 7 December, 2007; and interview summary on 7 March, 2008, and again on 10 October, 2008, an interview summary; a non-final Office action on 5 March, 2009, and again on 27 November, 2009, a non-final Office action. Although all of those mailings went to the address set forth—albeit erroneously—in February, 2007, for more than three (3) years Petitioner failed to submit a Notice of Change of Address to correct the error of which he was aware. Thus, for more than three (3) years Petitioner accepted an erroneous address as his mailing address of record, yet Petitioner complained on 15 December, 2010, that the Office failed to correct the error, and it was only with that filing that Petitioner elected to file a Notice of Change of Address to correct the error of February 2007. The petition was dismissed on 22 February, 2011.

On 4 April, 2011, Petitioner filed a petition pursuant to 37/C.F.R. §1.137(b) with an averment of unintentional delay, and though he made the statement of unintentional delay, he apparently did not submit the petition fee or the reply in the form of fees due until he filed a supplement on 24 May, 2011. However, Petitioner also failed to properly sign the petition he submitted—his attempt at an electronic or S-signature ("/s/Ronald H. Spuhler" (sic)) was not in compliance with the Rules of Practice. (See: 37 C.F.R. §1.4.) Papers with improper signature are considered as unsigned, and cannot be considered by the Office. The petition was dismissed on 3 June, 2011.

On 14 June, 2011, Petitioner filed, *inter alia*, a petition (with fee) pursuant to 37 C.F.R. §1.137(b), and pointed to the reply in the form of fees due, and made the statement of unintentional delay.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP  $\S711.03(c)$  as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R.  $\S1.137(b)$ .

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice <u>and</u> all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>1</sup>

See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Offi. Gaz. Pat. Office at 88

# STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).<sup>2</sup> The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and, by definition, are not intentional.<sup>3</sup>))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

#### **CONCLUSION**

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is granted.

The instant application is released to the Publications Branch to be processed into a patent in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Publications Branch in response to this decision. It is noted that all inquiries with regard to status need be directed to the Publications Branch where that change of status must be effected—that does not occur in the Office of Petitions.

35 U.S.C. §133 Time for prosecuting application.

and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

<sup>&</sup>lt;sup>2</sup> 35 U.S.C. §133 provides:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

Therefore, by example, an <u>unintentional</u> delay in the reply might occur if the reply and transmittal form are <u>to be</u> prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

## Application No. 09/808,722

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>4</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./ John J. Gillon, Jr. Senior Attorney Office of Petitions

The regulations at 37 C.F.R. §1.2 provide: §1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.



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Harvard University & Medical School c/o Wolf, Greenfield & Sacks, P.C. 600 Atlantic Avenue
Boston MA 02210-2206

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MAR 1 4 2011
OFFICE OF PETITIONS

In re Application of

Ostuni et al.

Application No. 09/808745

Filing or 371(c) Date: 03/15/2001

Pat. Num.: 6893850 Issue Date: 05/17/2005 Attorney Docket Number: H0498.70135US00 **ON PETITION** 

This is a notice regarding request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

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40 (absets)

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions



Commissioner for Patents United States Patent and Trademark-Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY NY 11530

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JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of Marie Christine Bissery

Application No. 09/809,329

Filed: March 16, 2001

Attorney Docket No. 03806.0493-00

**DECISION ON PETITION** 

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 8, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 1, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on March 2, 2006. A Notice of Abandonment was mailed June 12, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of \$1,500.00, and (3) a proper statement of unintentional delay.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office. Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall

constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Additionally, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,020.00, three- month extension of time fee submitted with the petition on November 8, 2006 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's deposit account in due course.

Further, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 1623 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski Petitions Examiner Office of Petitions

cc:

Jason G. Tebbutt

Pfizer Inc

Patent Department

150 East 42<sup>nd</sup> Street (150/5/49) New York, NY 10017-5755



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

GREER, BURNS & CRAIN 300 S WACKER DR 25TH FLOOR CHICAGO, IL 60606

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JAN 1 9 2011

OFFICE OF PETITIONS

In re Application of Linda S. Mensch Application No. 09/809,775 Filed: March 16, 2001 Attorney Docket No. 10501/3

DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 18, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 20, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.\(^1\)

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2421 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/AMW/ April M. Wise Petitions Examiner Office of Petitions

The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). <u>Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.</u>





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

CLARK & ELBING LLP 101 FEDERAL STREET BOSTON MA 02110

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AUG 3 1 2011

OFFICE OF PETITIONS

In re Application of Perry F. Renshaw

Application No. 09/810109

Filing or 371(c) Date: 03/15/2001

Attorney Docket Number:

04843/067002

ON APPLICATION FOR

PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed July 19, 2011. Applicant petitions for reconsideration of the patent term adjustment to 791 days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction based upon an assertion that the Office erred in failing to calculate an adjustment of 811 days, and the Office erred in calculating a reduction of 362 days. The petition is properly treated under 37 C.F.R. § 1.705(b).

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), as it relates to the assertion that the Office erred in calculating a reduction of 79 days is **GRANTED to the EXTENT INDICATED**.

On April 19, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days.

On July 19, 2011, Applicant timely submitted the instant application for patent term adjustment<sup>1</sup>. Applicant requests that the Determination of Patent Term Adjustment be corrected from zero (0) days, as indicated on the Determination of PTA mailed May 2, 2011, to an adjustment of 791 days.

Applicant asserts that the Office erred in calculating erred in failing to calculate an adjustment of 811 days. The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed February 3, 2011 indicates a patent term of zero (0) days. The instant request for reconsideration of patent term adjustment indicates that the Office may have erred in failing to calculate an adjustment of 811 days in connection with the filing of a request to reopen prosecution after a decision by the Board of Patent Appeals and Interferences ("Board"). Applicant avers that the

<sup>&</sup>lt;sup>1</sup> PALM records show that the Issue Fee payment was received in the Office on July 19, 2011.

Office failed to properly respond to Applicant's request to reopen prosecution until the mailing of a non-final Office action on May 22, 2009, and a period of adjustment of 811 days, beginning on the day after the date that is four months after the request to reopen prosecution was filed, and ending on May 22, 2009, with the mailing of the non-final Office action. Applicant does not state which section of the Patent Term Adjustment Statute or Rules upon which the requested relief may be granted.

Applicant also avers that the Office erred in calculating a reduction of 362 days in connection with the filing of an Information Disclosure Statement ("IDS"), after the filing of a Reply Brief. Applicant avers, in relevant part, that no provision of 37 CFR 1.704 relates to the filing of an IDS after the filing of a Reply Brief.

Applicants state that this application is not subject to a terminal disclaimer.

Regarding the assertion that the Office erred in failing to calculate an adjustment of 811 days in connection with the Office's failure to properly respond to Applicant's request to reopen prosecution until the mailing of a non-final Office action on May 22, 2009, Office records confirm that Applicant filed an improper Request for Rehearing on November 3, 2006. Pursuant to the MPEP 1214.01(II), an improper Request for Rehearing will be treated as a request to reopen prosecution. However, the applicable rule, 37 CFR 1.702, Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000), limits an adjustment of the patent term due to examination delay to those situations as iterated in 37 CFR 1.702. Here, the failure to reply to a request to reopen prosecution within four months after the filing of a request to reopen prosecution is not a ground for adjustment of the patent term due to examination delay, and no adjustment of 811 days is warranted.

Further to this, the adjustment of 67 days in connection with the Office's response to the Request to Reopen Prosecution and Amendment filed September 20, 2007, on March 19, 2008, is in error, and no adjustment in connection with the Office's response to the Request to Reopen Prosecution and Amendment mailed March 19, 2008, is warranted.

Regarding the assertion that the Office has failed to calculate a reduction in connection with the failure of the Office to Regarding the filing of the IDS after filing the Reply Brief, the calculation of patent term adjustment has been reviewed and it is determined that no reduction is warranted for the filing of the IDS on July 17, 2006. This reduction was incorrectly entered pursuant to 37 CFR 1.704(c)(8) for applicants having filed an IDS after filing a Reply Brief. Pursuant to 37 CFR 1.704(c)(8),

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in

§ 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed; (Emphasis added)

is a circumstance that constitutes a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application.

The filing of the IDS in this instance is not a failure to engage in reasonable efforts to conclude examination. A Reply Brief filed after a notice of appeal is not considered a reply within the meaning of this section (or §1.704(b)). In turn, an IDS filed after a Reply Brief is not a supplemental reply or other paper filed after a reply has been filed. The reduction of 362 days is not warranted and is removed.

A further review of Office records confirms that applicant filed, inter alia, a Request for Continued Examination ("RCE"), and an Amendment in response to a final Office action, on August 19, 2010. Thereafter, applicants filed an IDS on August 20, 2010. A review of the IDS, filed August 20, 2010, confirms that the IDS does not contain the language required by 37 CFR 1.704(d). As such, pursuant to 37 CFR 1.704(c)(8), the application is properly assessed a reduction of 1 day, commencing August 20, 2010, the day after the date that the reply to the final Office action was filed, and ending on the date the IDS was filed, August 20, 2010.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance remains zero (0) days (adjustments of 276 days (135 days + 141 days) – reductions of 297 days (1 day + 64 days + 64 days + 75 days + 92 days + 1 day)).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations



Term

# Adjustments

PTA/PTE Information Patent <u>Term Adjustment</u>

Patent Term <u>E</u>xtension

Application Number\*: 09810109

Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 09810109

<del></del>	
Application Filing Date 03/15/2001	OverLapping Days Between (A and B) or (A and C)
Issue Date of Patent	Non-Overlapping USPTO Delays: 343
A Delays 343 .	PTO Manual Adjustment 294
B Delays 0	Applicant Delay (APPL) 658
C Delays 0	Total PTA (days) 0

0

\* - Sorted Column

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File Contents History

**9** 

<u>Action</u> Number	Action Recorded Date	Action Due Date	Action Code	<u>Action</u> <u>Description</u>	<u>Duration</u> PTO	Duration APPL	Parent Action Numb
51	08/29/2011		P028	Adjustment of PTA Calculation by PTO		<u>1</u>	0
50	08/29/2011		P028	Adjustment of PTA Calculation by PTO	•	67	0
9	08/29/2011		P028	Adjustment of PTA Calculation by PTO	362	_	0
9	04/19/2011		MN/=.	Mail Notice of Allowance			0
8	04/13/2011		OAR	Office Action Review			0
							0
37	04/13/2011		OAR	Office Action Review			-
36	04/13/2011		OAR '	Office Action Review			0
35	04/13/2011		N/=.	Notice of Allowance Data Verification Completed			0
34	04/13/2011		IREV	Issue Revision Completed			0
33	04/13/2011		DVER	Document Verification			0
32	04/10/2011		EX.R	Reasons for Allowance			0
31	04/10/2011	-	EX.A	Examiner's Amendment Communication		•	0
30	04/10/2011		CNTA	Allowability Notice			0
22	01/11/2011		FWDX	Date Forwarded to Examiner			0
.26	01/10/2011		IDSC	Information Disclosure Statement considered			0
							0
.24	01/10/2011		RCAP	Reference capture on IDS			
.23	01/10/2011	01/10/2011	M844	Information Disclosure Statement (IDS) Filed			121
21	01/10/2011		ELC.	Response to Election / Restriction Filed			0
.20	01/10/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
19	12/09/2010		ELC_RVW	Electronic Review			0
18	12/09/2010		EML_NTF	Email Notification			0
117	12/09/2010		MCTRS	Mail Restriction Requirement			0
116	12/06/2010		CTRS	Restriction/Election Requirement			0
112	08/27/2010		FWDX	Date Forwarded to Examiner			0
109			ABN9	Disposal for a RCE / CPA / R129			0
	08/27/2010						ŏ
125	08/20/2010		IDSC	Information Disclosure Statement considered			
114	08/20/2010		RCAP	Reference capture on IDS			0
L13	08/20/2010		M844	Information Disclosure Statement (IDS) Filed			0
L06	08/20/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
115	08/19/2010		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
111	08/19/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
110	08/19/2010	05/19/2010	RCEX	Request for Continued Examination (RCE)		<u>92</u>	103
108	08/19/2010		XT/G	Request for Extension of Time - Granted		_	0
107	08/19/2010		BRCE	Workflow - Request for RCE - Begin			0
105			ELC_RVW	Electronic Review			0
	02/19/2010		_	•			0
104	02/19/2010		EML_NTF	Email Notification			-
103	02/19/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
102	02/16/2010		2091	Disposal Flag Change			0
101	02/15/2010		CTFR	Final Rejection			0
100	02/14/2010		2091	Disposal Flag Change			0
98	11/13/2009		FWDX	Date Forwarded to Examiner			0
97	11/05/2009	08/22/2009	A	Response after Non-Final Action		<u>75</u>	93
96	11/05/2009	, ,	XT/G	Request for Extension of Time - Granted		_	0
95	05/22/2009		ELC_RVW	Electronic Review			0
95 94			EML_NTF	Email Notification			0
	05/22/2009						0
93	05/22/2009		MCTNF	Mail Non-Final Rejection			
92	05/20/2009		CTNF	Non-Final Rejection			0
91	03/27/2009		EML_NTR	Email Notification			0
90	03/27/2009		APRD	Order Returning Undocketed Appeal to the Examiner			0
89	02/18/2009		APWD	Appeal Awaiting BPAI Docketing			0
88	02/10/2009		ARBP	Appeal ready for BPAI review			0
87	11/07/2008		TCWD	Appeal ready for BPAI docketing			0
B6	10/23/2008		EML_NTR	Email Notification			o .
85	10/22/2008		MM327	Mail Miscellaneous Communication to Applicant			0
84			M327	Miscellaneous Communication to Applicant - No Action Count			o
	10/16/2008		TCRD				0
33	10/01/2008			Return of Undocketed appeal to the TC			
82	10/01/2008		PACC	Exam. Ans. Review Complete			0
81	08/19/2008		ELC_RVW	Electronic Review			0
30	08/19/2008		EML_NTF	Email Notification			0
79	08/19/2008	-	MAPEA	Mail Examiner's Answer			0
78	08/13/2008		APEA	Examiner's Answer to Appeal Brief			0
76	04/21/2008		TCRD	Return of Undocketed appeal to the TC			0
75			PACC	Exam. Ans. Review Complete			0
	04/21/2008						0
74	04/01/2008		ELC_RVW	Electronic Review			
73	03/29/2008		EML_NTF	Email Notification			0
72	03/27/2008	01/20/2008	MAPEA	Mail Examiner's Answer	<u>67</u>		67
			APEA	Examiner's Answer to Appeal Brief			0

	1							
	77	11/23/2007		IDSC	Information Disclosure Statement considered			0
	70	11/23/2007	09/20/2007	M844	Information Disclosure Statement (IDS) Filed		<u>64</u>	67
	69	11/23/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
	68 67	09/28/2007		FWDX	Date Forwarded to Examiner			ŏ
	66	09/20/2007		RPEA	Resp. to post-examiner ans			ů
	65	08/21/2007		MPEAC	Mail Post-examiner ans. com			١
	62	08/17/2007		PEAC APRD	Post-examiner ans. com Order Returning Undocketed Appeal to the Examiner			١
	61	07/10/2007 05/30/2007		APWD	Appeal Awaiting BPAI Docketing			o l
	60	05/16/2007		MM327	Mail Miscellaneous Communication to Applicant			ŏ l
	59	05/14/2007		M327	Miscellaneous Communication to Applicant - No Action Count			ō
	56	04/26/2007		APRD	Order Returning Undocketed Appeal to the Examiner			0
	55	03/13/2007		APRR	Request for Reconsideration of Appeal Dec			0
	53	09/01/2006		MAPDA	Mail BPAI Decision on Appeal - Affirmed			0
	52	08/31/2006		APDA	BPAI Decision - Examiner Affirmed	•		0
	51	08/31/2006		APDN	BPAI Decision 41.50(b)			0
	57	07/17/2006		IDSC	Information Disclosure Statement considered			0
	50.7	07/17/2006	07/20/2005	M844	Information Disclosure Statement (IDS) Filed		362	40
	50	07/17/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
	49	05/01/2006		APNH	Notification of Appeal Hearing			0
	58	03/29/2006		IDSC	Information Disclosure Statement considered			0
	48	03/29/2006		RCAP	Reference capture on IDS			0
	47.7	03/29/2006		M844	Information Disclosure Statement (IDS) Filed			0
	47	03/29/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
	46	02/21/2006		AP_DK_M	Docketing Notice Mailed to Appellant			0
	45	02/21/2006		APAS	Assignment of Appeal Number			0
	44	01/25/2006		APWD	Appeal Awaiting BPAI Docketing			0
	43	10/11/2005		MRBNE	Mail Reply Brief Noted by Examiner			0
	42	10/03/2005		RBNE	Reply Brief Noted by Examiner			0
	41	07/26/2005		FWDX	Date Forwarded to Examiner			0
	40	07/20/2005		APRB	Reply Brief Filed			0
	39	07/20/2005		APOH	Request for Oral Hearing			0
	38	05/17/2005	12/27/2004	MAPEA	Mail Examiner's Answer	<u>141</u>		35
	37	03/21/2005		APEA	Examiner's Answer to Appeal Brief			0
	36	09/16/2004		FWDX	Date Forwarded to Examiner			0.
	33	09/16/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
	35	08/27/2004		AP.B	Appeal Brief Filed			0
3	34 32	08/27/2004		XT/G	Request for Extension of Time - Granted			
	31	05/04/2004		MCTAV	Mail Advisory Action (PTOL - 303)			
	28	05/03/2004		CTAV FWDX	Advisory Action (PTOL-303)  Date Forwarded to Examiner			ŏ
	30	04/07/2004 03/25/2004		RCAP	Reference capture on IDS			ŏ
	29.7	03/25/2004		M844 -	Information Disclosure Statement (IDS) Filed			ò
	29	03/25/2004		WIDS	Information Disclosure Statement (IDS) Filed			ō
	27	03/25/2004		AP/A	Amendment/Argument after Notice of Appeal			0
	26	03/25/2004	01/21/2004	N/AP	Notice of Appeal Filed		64	24
	25	03/25/2004		XT/G	Request for Extension of Time - Granted		_	0
	24	10/21/2003		MCTFR	Mail Final Rejection (PTOL - 326)			0 .
	23	10/20/2003		CTFR	Final Rejection			0
	22	07/03/2003		FWDX	Date Forwarded to Examiner			0
	21	06/26/2003	06/25/2003	A	Response after Non-Final Action		1	20
	20	03/25/2003		MCTNF	Mail Non-Final Rejection			0
	19	03/24/2003		CTNF	Non-Final Rejection			0
	18	01/09/2003		FWDX	Date Forwarded to Examiner			0
	17	12/27/2002		ELC.	Response to Election / Restriction Filed			0
	16	12/27/2002		XT/G	Request for Extension of Time - Granted			0
	15	10/04/2002		DOCK	Case Docketed to Examiner in GAU			0
	14	09/27/2002	05/15/2002	MCTRS	Mail Restriction Requirement	<u>135</u>		0.5
	13	09/26/2002		CTRS	Restriction/Election Requirement			0
	12	09/26/2002		DOCK	Case Docketed to Examiner in GAU			0
	11.7	07/16/2002		M844	Information Disclosure Statement (IDS) Filed			0
	11	07/16/2002		WIDS	Information Disclosure Statement (IDS) Filed			0
	10.7	02/26/2002		M844 WIDS	Information Disclosure Statement (IDS) Filed			0
	10	02/26/2002 10/16/2001		WIDS M844	Information Disclosure Statement (IDS) Filed Information Disclosure Statement (IDS) Filed			ŏ
	9.7	10/16/2001		WIDS	Information Disclosure Statement (IDS) Filed Information Disclosure Statement (IDS) Filed			0
	8	09/26/2001		DOCK	Case Docketed to Examiner in GAU			ŏ
	6	09/17/2001		OIPE	Application Dispatched from OIPE			ō
	7	07/30/2001		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
	5	04/30/2001		COMP	Application Is Now Complete			0
	4	04/30/2001		INCD	Notice MailedApplication Incomplete-Filing Date Assigned			0
	3	04/27/2001		C.AD	Correspondence Address Change			0
	2	04/05/2001		SCAN	IFW Scan & PACR Auto Security Review			0
	1	03/15/2001		IEXX	Initial Exam Team nn			0
	0.5	03/15/2001		EFILE	Filing date			0

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0.5 03/15/200 Export to: <u>Excel</u>

EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6547946	2003-04-15	09810877	2001-03-16	IL-10598			
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	enance fee (and surcha application leading to is ims, or has previously	suance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR			
LOSS OF ENTITL	LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS  Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)						
NOT Small Entity			Small Entity				
Fee	Code		Fee	Code			
3 ½ year	(1551)		3 ½ year	(2551) (2552)			
7 ½ year	(1552)		7 ½ year 11 ½ year	(2553)			
O 11 ½ year	r (1553)		11 /2 year	(2333)			
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment			
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.				
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE M	MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) R REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT			
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES			
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."			
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am					
An attorney     A sole pater	or agent registered to	oractice before the	Patent and Tradema	ark Office			
$\circ$							
O A Joint pater	itee, i certily that i am	aumonzed to sign	this submission on b	ehalf of all the other patentees.			
O A joint pater	ntee; all of whom are si	gning this e-petitio	on				
The assigne	ee of record of the entir	e interest					

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/James S. Tak, #46367/	Date (YYYY-MM-DD)	2011-07-01					
Name	James S. Tak	Registration Number	46367					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6547946

Issue Date: April 15,2003

Application No. 09810877

Filed: March 16,2001 Attorney Docket No. IL-10598 •

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

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This is a decision on the electronic petition, filed  $\frac{\text{July 1,2011}}{\text{July 1,2011}}$ , under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the  $\frac{\text{July 1,2011}}{\text{July 1,2011}}$ , under 37 CFR 1.378(c)

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045 MAILED

OCT 2 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,010,482

Issue Date: March 7, 2006

Application No. 09/811,187

Filed: March 16, 2001

Attorney Docket No. 30794.347-US-01

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Trvin Dingle
Petitions Examiner
Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

Alexandria, VA 22313-1450 www.uspto.gov

JERRY K. MUELLER, JR. 7700 RIVERS EDGE DRIVE COLUMBUS OH 43235 MAILED
FEB 1 4 2011
OFFICE OF PETITIONS

In re Patent No. 6,451,421

Issue Date: September 17, 2002

Application No. 09/811,274

Filed: March 19, 2001

Attorney Docket No. INF 2-049

Paper No. 6

**DECISION ON PETITION** 

This is a decision on the petition under 37 CFR 1.378(c), filed November 15, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

This patent expired at midnight on September 17, 2010 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (2) above in that the total amount due for a small entity is \$2880 that includes the maintenance fee amount of \$1240 and a surcharge of \$1640 for unintentional delay. Petitioner has paid \$810. The Balance of \$2070 is now due towards the maintenance fee and surcharge.

Petitioner should note that any renewed petition must include a total payment of \$2470 to cover the \$400 petition fee for a renewed petition and the balance of \$2070 due towards the maintenance fee and surcharge as noted above.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Tredelle Jackson at 571-272-2783.

Ramesh Krishnamurthy

Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN						
		EXPIRED P	ATEN1	(37 CF	R 1.378(c))	
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing (YYY)	Date ⁄-MM-DD)	Docket Number (if applicable)	
6453544	2002-09-24	09812984	2001-0	3-20	96-307-US-C	
of the actual U.S. a 1.366(c) and (d).					ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY  X Patentee cla	ims, or has previously	claimed, small ent	tity status	. See 37 Cl	FR 1.27.	
LOSS OF ENTITL Patentee is r	EMENT TO SMALL EN no longer entitled to sm	NTITY STATUS nall entity status. S	See 37 C	FR 1.27(g)		
NOT Small Entity			Small E	Entity		
Fee 3 ½ year	Code (1551)			Fee 3 ½ year	Code (2551)	
○ 7½ year	(1552)		•	7 1/2 year	(2552)	
	r (1553)		0	11 ½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) mus	t be paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(ç aintenance fee must b		his petitio	n.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	IED CERTIFIES THAT	THE DELAY IN F	PAYMEN	T OF THE N	MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) REINSTATED	REQUEST THAT THE	DELAYED PAYME	ENT OF T	HE MAINTI	ENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	TORY OF	SIGNATOR	RIES	
	states: "Any petition un- fice, or by the patentee				ttorney or agent registered to practice before the Patent st."	
I certify, in accorda	ance with 37 CFR 1.4(c	d)(4) that I am				
An attorney	or agent registered to	practice before the	e Patent a	and Tradem	ark Office	
A sole pater						
A joint pater	ntee; I certify that I am	authorized to sign	this subr	nission on b	ehalf of all the other patentees.	
A joint pater	ntee; all of whom are s	igning this e-petition	on			
The assigne	ee of record of the entir	e interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature							
Signature	/Cheryl L. Gastineau/	Date (YYYY-MM-DD)	2010-12-20				
Name	Cheryl L. Gastineau	Registration Number	39469				

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 645

6453544

Issue Date:

September 24,2002

Application No. 09812984

00010001

• •

09012904

Filed:

March 20,2001

Attorney Docket No. 96-307-US-C

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

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This is a decision on the electronic petition, filed December 20,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.





Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
MAY 0 2 2011

OFFICE OF PETITIONS

FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK NY 10038

In re Patent No. 7,137,105

Issue Date: November 14, 2006

Application No. 09/813,522

Filed: March 21, 2001

Attorney Docket No. 40101/10901

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), February 16, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on November 15, 2010, for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the sixmonth grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet Petitions Examiner Office of Petitions Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM		Docket Number (if applicable)	
7,219,235	2007-05-15	09/813,765	2001-03-22	2		
of the actual U.S. a 1.366(c) and (d).					ntify: (1) the patent number and (2) the application number (s) is/are associated with the correct patent. 37 CFR	
SMALL ENTITY  X Patentee cla	ims, or has previously	claimed, small ent	ity status. Se	ee 37 CF	FR 1.27.	
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1	.27(g)		
NOT Small Entity			Small Entity	y		
Fee 3 ½ year	Code (1551)			ee ⁄₂ year	Code (2551)	
7 ½ year	(1552)		0 7 1/2	∕₂ year	(2552)	
11 ½ year	(1553)		O 11	½ year	(2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be	paid as	a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF	THE M	AINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) R REINSTATED	EQUEST THAT THE [	DELAYED PAYME	NT OF THE	MAINTE	NANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIG	SNATOR	NES	
	tates: "Any petition und fice, or by the patentee				torney or agent registered to practice before the Patent t."	
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am				
An attorney	or agent registered to	oractice before the	Patent and 7	Tradema	rk Office	
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this submissi	ion on be	ehalf of all the other patentees.	
A joint pater	ntee; all of whom are si	gning this e-petitic	on			
The assigne	e of record of the entire	e interest				

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	The Assignee of record of the entire interest						
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest							
Signature	/Thomas Corder/ Date (YYYY-MM-DD) 2011-08-16						
Name	Thomas Corder, President, BridgePoint Systems, Inc						
Enter Reel an	Enter Reel and Frame Number Remove						
Reel Number 011631 Frame Number 0891							
Click ADD for additional Reel Number and Frame Number Add							

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7219235

Issue Date:

May 15,2007

Application No. 09813765

Filed:

March 22,2001

Attorney Docket No. A-68945/RBC

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

August 16,2011 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

August 16,2011 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021

MAILED

MAY 10 2011

OFFICE OF PETITIONS

In re Patent No. 6,638,071

Issue Date: October 28, 2003

Application No. 09/814,019

Filed: March 21, 2001

Attorney Docket No. SGG-10102/04

NOTICE UNDER 37 CFR 1.28(C)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Monica A. Graves at (571) 272-7253.

/Monica A. Graves/ Petitions Examiner, Office of Petitions

	SPE RESPONSE FO	R CERTIFICATE OF CORRECTION
DATE	: 06-15-2011	•
TO SPE OF 09/814038	: ART UNIT Patent No.: 635069	94
•		CofC mailroom date: 06-12-
		2011
Please respo	and to this request for a cert	ificate of correction within 7 days.
FOR IFW FI	LES:	
the IFW app meaning of t	lication image. No new mat the claims be changed. ՝	orrections as shown in the <b>COCIN</b> document(s) in ter should be introduced, nor should the scope or
Please compusing docum	plete the response (see belo nent code COCX.	w) and forward the completed response to scanning
FOR PAPE	R FILES:	•
Please revie	ew the requested changes/co Please complete this form (s	orrections as shown in the attached certificate of see below) and forward it with the file to:
Rand Palm	ficates of Correction Brand olph Square – 9D10-A Location 7580	Eva James
Note:	uld this request be	
		Certificates of Correction Branch
		571-272-3422
Thank You	For Your Assistance	•
The reques		entified correction(s) is hereby:
×	Approved	All changes apply.
<i>(</i>	Approved in Part	Specify below which changes do not apply.
	Denied	State the reasons for denial below.
Comments	· }:	
		ente!
	1	
	111/1/2	RICHARD T. ELMS CHPERVISORY PATENT EXAMINER
	1 1/1/	TECHNOLOGY CENTER 2800
•		AN UNIT 2864
TOL-306 (REV. 7/0)	3)	U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

PTOL-306 (REV. 7/03)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
7275089	2007-09-25	09814154	2001-03-21	252532USMF		
of the actual U.S. a 1.366(c) and (d).				entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR		
SMALL ENTITY    X   Patentee cla	ims, or has previously o	claimed, small ent	ity status. See 37 C	FR 1.27.		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee 3 ½ year	Code (1551)		Fee ● 3½ year	Code (2551)		
	(1552)		○ 7½ year	(2552)		
11 ½ year	(1553)			(2553)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 15	558) must be paid a	s a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	EQUEST THAT THE D	ELAYED PAYME	NT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES		
	tates: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."		
I certify, in accorda	ance with 37 CFR 1.4(d	)(4) that I am				
An attorney	or agent registered to p	ractice before the	Patent and Tradem	ark Office		
A sole pater	ntee					
A joint pater	ntee; I certify that I am a	authorized to sign	this submission on l	pehalf of all the other patentees.		
A joint pater	itee; all of whom are si	gning this e-petitio	n			
The assigne	e of record of the entire	e interest				

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Patent Practitioner							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature								
Signature	/Bradley D. Lytle/	Date (YYYY-MM-DD)	2012-01-04					
Name	Bradley D. Lytle	Registration Number	40073					

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

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- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 7275089

Issue Date:

September 25,2007

Application No. 09814154

Filed:

March 21,2001

Attorney Docket No. 252532US8

January 4,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

January 4,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP
TEN POST OFFICE SQUARE
BOSTON MA 02109

OCT 3 1 2011

OFFICE OF PETITIONS

In re Patent No. 6,504,794

Issue Date: January 7, 2003

Application No. 09/814,175 :

Filed: March 21, 2001

Attorney Docket No. WHAAS-001XX

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed October 3, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on January 7, 2011 for failure to pay the 7.5-year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

/Liana Walsh/ Liana Walsh Petitions Examiner Office of Petitions

cc:

ZACHARY HAASE 7 MATTHEW LANE STERLING, MA 01564

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))							
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)			
6692783	2004-02-17	09814490	2001-03-21				
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		ssuance of that pa	tent to ensure the fe	entify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR			
LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS  Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)							
NOT Small Entity			Small Entity				
Fee 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)			
7 ½ year (1552)			7 ½ year	(2552)			
11 ½ year	(1553)		11 ½ year	(2553)			
SURCHARGE The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.							
MAINTENANCE FEE (37 CFR 1.20(e)-(g)) The appropriate maintenance fee must be submitted with this petition.							
STATEMENT THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL							
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED							
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES							
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."							
I certify, in accordance with 37 CFR 1.4(d)(4) that I am							
An attorney or agent registered to practice before the Patent and Trademark Office							
A sole patentee  A joint patentee: I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.							
A joint patentee; all of whom are signing this e-petition							
The assignee of record of the entire interest							

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Sole Patentee							
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.							
Signature	/Mary L. Hunter/	Date (YYYY-MM-DD)	2012-04-03				
Name	Mary L. Hunter						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6692783

Issue Date:

February 17,2004

Application No. 09814490

Filed:

March 21,2001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Attorney Docket No. 67.697

This is a decision on the electronic petition, filed

April 3,2012

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

April 3,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LAW OFFICE OF CHARLES E. KRUEGER P.O. BOX 5607 WALNUT CREEK, CA 94596-1607 MAILED
MAR 10'2011

OFFICE OF PETITIONS

In re Patent No. 6.418.532

Issue Date: July 9, 2002

Application No. 09/814,559

Filed: March 22, 2001

Patentee(s): Peter M. Redford, et. al.

NOTICE

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on January 4, 2011.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Additionally, the request is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of V. Randall Gard appearing on the request shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts.

Your fee deficiency submission under 37 CFR 1.28 is hereby <u>ACCEPTED</u>. Therefore, status as a small entity has been removed and any future fee(s) submitted must be paid at the large entity rate.

It is noted that the correspondence address given in the present request differs from the address of record. A courtesy copy of this Notice is being mailed to the address given in the request. Thereafter, any future communications from the Office will be mailed solely to the fee address of record.

Inquiries/related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith Petitions Examiner

Office of Petitions

cc: V. Randall Gard

Gard & Kaslow, LLP 4 Main Street, Suite 120 Los Altos, CA 94022 Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION IC	ACCEPT UNIN		ATENT (37 CFF	R 1.378(c))
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6832920	2004-12-21	09/814,764	2001-03-22	T1680.CIP3.CON
				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
l	ims, or has previously	claimed, small ent	ity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee 3 ½ year	Code (2551)
● 3½ year ○ 7½ year	(1551) (1552)		7 ½ year	(2552)
11 ½ year			11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	l 558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATOR	RIES
	states: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent t."
I certify, in accorda	ance with 37 CFR 1.4(c	l)(4) that I am		
An attorney	or agent registered to	oractice before the	e Patent and Tradema	ark Office
A sole pater	ntee			
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on	
☐ The assigne	ee of record of the entir	e interest		

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-27			
Name	Kendal M. Sheets	Registration Number	47077			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No. 6832920

Issue Date:

December 21,2004

Application No. 09814764

Filed:

March 22,2001

Attorney Docket No. T1680.CIP3.CON

September 27,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

September 27,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

DERRICK A. PIZARRO COX SMITH MATTHEWS INCORPORATED 112 EAST PECAN STREET, SUITE 1800 SAN ANTONIO, TX 78205-1536

MAILED

OCT 12 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,435,238

Issued: August 20, 2002

Application No. 09/815,121 Filed: March 22, 2001

Attorney Docket No: 30610.16

**ON PETITION** 

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed September 22, 2011 under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff

at (571) 272-3282.

Patricia Faison-Ball

Senior Petitions Attorney

McLitusm

Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HAYNES AND BOONE, LLP IP SECTION 2323 VICTORY AVENUE SUITE 700 DALLAS TX 75219

MAILED

DEC 13 2011

OFFICE OF PETITIONS

In re Patent No. 6,632,310

Issued: October 14, 2003

Application No. 09/815,293 : ON PE

Filed: March 21, 2001

Attorney Docket No. M-11969 US

**ON PETITION** 

This is a decision on the petition under 37 CFR 1.137(b), filed November 15, 2011, which will be treated as a petition under 37 CFR 1.378(c) to accept the delayed payment of a maintenance fee for the above-identified patent.

## The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks items (1) and (3) listed above.

With regards to item (1) the instant petition (form PTO/SB/66) is not signed. The statement required in item (1) has not been signed by petitioner. A grantable petition pursuant to 37 CFR 1.378(c) must include the required statement signed by:

- 1) An attorney or agent of record appointed in compliance with § 1.34(b);
- 2) A registered attorney or agent not of record who acts in a representative capacity under

the provisions of § 1.34(a);

- (3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;
- (4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or
- (5) All of the applicants (§§ 1.42.1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

Petitioner has failed to sign the petition and therefore the petition submitted is considered improper.

Additionally, it is noted that Kathleen Bowers is currently not authorized to sign a petition in the above-identified patent. Ms. Bowers has not established that she is authorized to sign on behalf of the patentee(s), assignee, or other party of interest.

Further, if the instant petition is on the behalf of the assignee, the petition does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A 37 CFR 3.73(b) statement is enclosed.

Currently, there is no proper Statement under 37 CFR 3.73(b) of record in the above-identified patent.

Consequently, the petition under 37 CFR 1.378(c), cannot be accepted at this time. A renewed petition with the proper signature as listed above is required.

With regards to item (3), petitioner has submitted \$75.00 towards the required \$1,640.00 surcharge fee, thus creating a \$1,565.00 shortage. Therefore, as stated above a \$400.00 petition fee is also required for any petition for reconsideration, bring the total to \$1,965.00.

A courtesy copy of this decision is being mailed to the address on the petition; however, all future correspondence will be mailed solely to the address of record.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITIONS

**Commissioner for Patents** Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

U.S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571)-272-7751.

/Joan Olszewski/ Joan Olszewski **Petitions Examiner** Office of Petitions

cc:

Kathleen Bowers

DPHI, Inc.

2101 Ken Pratt Blvd. #200 Longmont, Colorado 80501

Attachment: PTO/SB/96



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HAYNES AND BOONE, LLP IP SECTION 2323 VICTORY AVENUE SUITE 700 DALLAS TX 75219

MAILED JAN' 23 2012

OFFICE OF PETITIONS

In re Patent No. 6,632,310

Issued: October 14, 2003

Application No. 09/815,293

Filed: March 21, 2001

Attorney Docket No. M-11969 US

**ON PETITION** 

This is a decision on the renewed petition under 37 CFR 1.378(c), filed January 4, 2012, to accept the delayed payment of a maintenance fee for the above-identified patent.

## The petition is **GRANTED**.

This patent expired on October 15, 2011 for failure to pay the seven and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the sixmonth grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Lintant Niconhar	Issue Date	Application	Filing Date	
Patent Number	(YYYY-MM-DD)	Number	(YYYY-MM-DD)	Docket Number (if applicable)
6557179	2003-05-06	09815708	2001-03-23	
of the actual U.S. 1.366(c) and (d).				ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY  Patentee cla	nims, or has previously	claimed, small er	itity status. See 37 Cl	FR 1.27.
	EMENT TO SMALL EN END IONGER ENTITIED TO SM		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee → 3½ year	Code (1551)		Fee 3 ½ year	Code (2551)
7 ½ year	(1551)		7 ½ year	(2552)
11 ½ yea			11 ½ year	(2553)
SURCHARGE The surcharge recoff the maintenance		i)(2) (Fee Code	   1558) must be paid as	a condition of accepting unintentionally delayed payment
MAINTENANCE F	EE (37 CFR 1.20(e)-(g	1))		
The appropriate m	naintenance fee must b		this petition.	
STATEMENT	NED CERTIFIES THAT	e submitted with	•	MAINTENANCE FEE TO THIS PATENT WAS
STATEMENT THE UNDERSIGN UNINTENTIONAL	NED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
STATEMENT THE UNDERSIGN UNINTENTIONAL PETITIONER(S) F REINSTATED	NED CERTIFIES THAT	THE DELAY IN	PAYMENT OF THE N	ENANCE FEE BE ACCEPTED AND THE PATENT
STATEMENT THE UNDERSIGN UNINTENTIONAL PETITIONER(S) F REINSTATED THIS PORTION M 37 CFR 1.378(d) s	NED CERTIFIES THAT  REQUEST THAT THE  MUST BE COMPLETED	THE DELAY IN  DELAYED PAYM  D BY THE SIGNA  der this section m	PAYMENT OF THE MENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT  RIES  ttorney or agent registered to practice before the Patent
STATEMENT THE UNDERSIGN UNINTENTIONAL PETITIONER(S) F REINSTATED THIS PORTION M 37 CFR 1.378(d) s and Trademark Of	NED CERTIFIES THAT REQUEST THAT THE MUST BE COMPLETED States: "Any petition un	THE DELAY INDELAYED PAYMOND BY THE SIGNA der this section me, the assignee, o	PAYMENT OF THE MENT OF THE MAINTE	ENANCE FEE BE ACCEPTED AND THE PATENT  RIES  ttorney or agent registered to practice before the Patent
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STATEMENT THE UNDERSIGN UNINTENTIONAL PETITIONER(S) F REINSTATED  THIS PORTION M  37 CFR 1.378(d) s and Trademark Of I certify, in accorda  An attorney A sole pater A joint pater	NED CERTIFIES THAT REQUEST THAT THE MUST BE COMPLETED States: "Any petition unffice, or by the patented ance with 37 CFR 1.4(cor agent registered to intee	THE DELAY IN DELAYED PAYM DBY THE SIGNA der this section me, the assignee, of d)(4) that I am practice before the	PAYMENT OF THE MENT OF THE MAINTER  TORY OR SIGNATOR  Tother party in interes	ENANCE FEE BE ACCEPTED AND THE PATENT RIES ttorney or agent registered to practice before the Patent t."

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

	Sole Patentee						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.							
Signature	/Michelle G Reuven/	Date (YYYY-MM-DD)	2012-02-06				
Name	Michelle G Reuven						

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



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In re Patent No.

6557179

Issue Date:

May 6,2003

Application No. 09815708

Filed:

March 23,2001

Attorney Docket No. 21-0318

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

February 6,2012 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

February 6,2012 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

THOMAS L. KIRSCH & ASSOCIATES
131 RIDGE ROAD
MUNSTER TN 46321

MAILED

AUG 1 6 2010

OFFICE OF PETITIONS

In re Application of

Thomas Jefferson Bush, III

Application No. 09/815,794 :

Filed: March 23, 2001

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 15, 2010, to revive the above-identified application.

## The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed March 2, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on May 3, 2006. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405, and the submission required by 37 CFR 1.114; (2) the petition fee of \$810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2991.

This application is being referred to Technology Center AU 3743 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Terri Johnson

Petitions Examiner

Office of Petitions



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THE NATH LAW GROUP 112 SOUTH WEST STREET ALEXANDRIA, VA 22314

MAILED

AUG 18 2010

In re Application of

David A. Schwartz

Application No. 09/815,978

Filed: March 22, 2001

Attorney Docket No. WSOL-1049568

OFFICE OF PETITIONS

**DECISION ON PETITION** 

TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 19, 2010.

The request is **NOT APPROVED**.

The Office will not decide request to withdraw from representation as practitioner of record which are filed after the patent has issued. Sections 2540 and 2542 of the Manuel of Patent Procedures (MPEP explain that alpractitioner does not have to request permission to withdraw as practitioner of record under 37 CFR 1.36 in order to change the address in a patented filed and to directed notices, receipts and other communications relating to maintenance fees. These requests will be placed in the application but will not be treated on their merits. The above mentioned sections of the MPEP recommend the designation of a fee address or submission of a change in correspondence address in the patented file for directing correspondence relating to maintenance fee payments and other correspondences after issuance. See Form PTO/SB/47, entitled, "Fee Address" Indication Form and Form PTO/SB/123, entitled, Change of Correspondence Address, Patent

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

/AMW/ April M. Wise Petitions Examiner Office of Petitions

cc:

JONES DAY 222 EAST 41<sup>ST</sup> STREET NEW YORK, NY 10017 PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))					
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-D	D) Docket Number (if applicable)	
6386321	2002-05-14	09816901	2001-03-23	2-5695-003/004	
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY	application leading to is	suance of that pa	tent to ensure the	identify: (1) the patent number and (2) the application number fee(s) is/are associated with the correct patent. 37 CFR	
LOSS OF ENTITLI	ims, or has previously EMENT TO SMALL EN to longer entitled to sm	ITITY STATUS			
NOT Small Entity			Small Entity		
Fee  3 ½ year	Code (1551)		Fee () 3 ½ ye	Code ar (2551)	
○ 7½ year	(1552)		● 7½ ye		
11 ½ year			○ 11 ½ y	ear (2553)	
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	 558) must be paid	d as a condition of accepting unintentionally delayed payment	
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.		
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF TH	IE MAINTENANCE FEE TO THIS PATENT WAS	
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAI	NTENANCE FEE BE ACCEPTED AND THE PATENT	
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNA	TORIES	
	tates: "Any petition und fice, or by the patentee			nn attorney or agent registered to practice before the Patent erest."	
I certify, in accorda	unce with 37 CFR 1.4(c	)(4) that I am			
An attorney	or agent registered to p	practice before the	e Patent and Trad	emark Office	
A sole pater	itee				
A joint pater	itee; I certify that I am	authorized to sign	this submission of	on behalf of all the other patentees.	
A joint patentee; all of whom are signing this e-petition					
○ The assigne	e of record of the entir	e interest			

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Michael O. Sturm/	Date (YYYY-MM-DD)	2010-11-29			
Name	Michael O. Sturm	Registration Number	26078			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6386321

Issue Date:

May 14,2002

Application No. 09816901

Filed:

March 23,2001

Attorney Docket No. G422

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

November 29,2010 ,under 37 CFR 1.378(c) This is a decision on the electronic petition, filed to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

November 29,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
6956936	2005-10-18	09817581	2001-03-26	11983.0008		
of the actual U.S. a 1.366(c) and (d).				retify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR		
SMALL ENTITY  Patentee cla	ims, or has previously	claimed, small ent	ity status. See 37 C	FR 1.27.		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)		
○ 7½ year	(1552)		○ 7½ year	(2552)		
◯ 11 ½ year	(1553)		○ 11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must be		nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE I	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES		
	tates: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."		
I certify, in accorda	unce with 37 CFR 1.4(c	l)(4) that I am				
An attorney	or agent registered to p	oractice before the	Patent and Tradem	ark Office		
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	pehalf of all the other patentees.		
A joint pater	ntee; all of whom are si	gning this e-petitio	on			
The assigne	e of record of the entir	e interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Patent Practitioner						
_	A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature					
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-10-13			
Name	Kendal M. Sheets	Registration Number	47077			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

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- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6956936

Issue Date:

October 18,2005

Application No. 09817581

Filed:

March 26,2001

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Attorney Docket No. 11983.0008

October 14,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

October 14,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6920210

Issue Date:

July 19,2005

Application No. 09817683

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

March 26,2001 Filed:

Attorney Docket No. 11983.0082

October 1,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

October 1,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))						
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)		
6920210	2005-07-19	09817683	2001-03-26	11983.0082		
of the actual U.S. a 1.366(c) and (d). SMALL ENTITY		ssuance of that pa	tent to ensure the fee	ntify: (1) the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR		
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)			
NOT Small Entity			Small Entity			
Fee  3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)		
7 ½ year	(1552)		○ 7½ year	(2552)		
	(1553)		○ 11 ½ year	(2553)		
SURCHARGE The surcharge req of the maintenance		)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment		
	EE (37 CFR 1.20(e)-(g aintenance fee must b		nis petition.			
STATEMENT THE UNDERSIGN UNINTENTIONAL	ED CERTIFIES THAT	THE DELAY IN F	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS		
PETITIONER(S) R REINSTATED	EQUEST THAT THE I	DELAYED PAYME	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT		
THIS PORTION M	UST BE COMPLETED	BY THE SIGNAT	ORY OR SIGNATO	RIES		
	tates: "Any petition und fice, or by the patentee			ttorney or agent registered to practice before the Patent it."		
I certify, in accorda	nce with 37 CFR 1.4(c	l)(4) that I am				
<ul><li>An attorney</li></ul>	or agent registered to	oractice before the	Patent and Tradem	ark Office		
A sole pater	ntee					
A joint pater	ntee; I certify that I am	authorized to sign	this submission on b	ehalf of all the other patentees.		
A joint pater	ntee; all of whom are si	gning this e-petitic	on			
The assigne	e of record of the entir	e interest				

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner						
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature						
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-09-29			
Name	Kendal M. Sheets	Registration Number	47077			

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

# **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133

MAILED
JUN 03 2011

OFFICE OF PETITIONS

In re Patent No. 6,511,915

Issue Date: January 28, 2003

Application No. 09/817,729

Filed: March 26, 2001

Attorney Docket No. 2777.2003-000

ON PETITION

This is a decision in response to a petition filed March 10, 2011, under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on January 29, 2011, for failure to pay the 7 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patent has been accorded small entity status.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

MICHAEL BEST & FRIEDRICH LLP 100 EAST WISCONSIN AVENUE SUITE 3300 MILWAUKEE WI 53202

# MAILED

JAN 03 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,832,407 Issue Date: December 21, 2004 Application No. 09/818,161

Filed: March 27, 2001

DECISION ON PETITION

This is a decision on the petition to reinstate an expired patent under 37 CFR 1.378(c), filed October 26, 2010.

:

The petition under 37 CFR 1.378(c) is **GRANTED**.

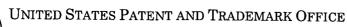
The above-identified patent issued December 21, 2004. Accordingly, the first maintenance fee could have been paid during the period from December 21, 2007 through June 21, 2008 without surcharge, or with a late payment surcharge during the period from June 22, 2008 through December 21, 2008. No maintenance fee having been received, the patent expired on December 22, 2008.

Since the instant petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c). The maintenance fee in this case is accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

Telephone inquiries specific to this decision may be directed to the undersigned at (571)272-3207.

less by

Cliff Congo Petitions Attorney Office of Petitions





Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON DC 20005 **MAILED** 

AUG 3 0 2010

**OFFICE OF PETITIONS** 

In re Application of Ahmet Alpdemir

Application No. 09/818,258

Filed: March 26, 2001

: DECISION ON PETITION

: UNDER 37 CFR 1.78(a)(3)

Attorney Docket No. 2222.4340002

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 25, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the Application Data Sheet (ADS) filed with the petition.

## The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in  $\S 1.17(t)$ ; and
- a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37

CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208.

/KOC/ Karen Creasy Petitions Examiner Office of Petitions

**ATTACHMENT**: Corrected Filing Receipt



# United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address COMMISSIONER FOR PATENTS P.O. BOX 1450 Alexandria, Viginia 22313-1450 www.uspto.gov

APPLICATION	FILING or	GRP ART			T	T
NUMBER	371(c) DATE	UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/818,258	03/26/2001	2654	1220	2222.4340002	100	5

26111 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005 CONFIRMATION NO. 9217
CORRECTED FILING RECEIPT



Date Mailed: 08/26/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections

Applicant(s)

Ahmet Alpdemir, San Jose, CA;

Power of Attorney: The patent practitioners associated with Customer Number 26111

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/219,079 07/18/2000 and is a CIP of 09/534,700 03/24/2000 PAT 6,658,389

**Foreign Applications** 

If Required, Foreign Filing License Granted: 05/05/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/818,258** 

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

\*\* SMALL ENTITY \*\*

#### Title

Voice-interactive marketplace providing time and money saving benefits and real-time promotion publishing and feedback

## **Preliminary Class**

704

#### PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

#### LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

#### **GRANTED**

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

page 2 of 3

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

#### **NOT GRANTED**

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450

MAILED

APR 19 2011

Henry I. Schanzer, Esq. 29 Brookfall Road Edison NJ 08817 OFFICE OF PETITIONS

In re Patent No.: 7,141,032

Issue Date: November 28, 2006

Application No. 09/818,722 : ON

Filed: March 27, 2001

Atty. Docket No. FLAM 2A

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed January 31, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on November 29, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to Robert DeWitty at 571-272-8427.

David Bucci

Petitions Examiner
Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BIRCH STEWART KOLASCH & BIRCH P.O. BOX 747 FALLS CHURCH, VA 22040-0747

MAILED

NOV 07 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,478,966

Issue Date: November 12, 2002

Application No. 09/818,775

Filed: March 28, 2001

Patentee(s): Maoqing Zhou, et. al.

NOTICE

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on September 21, 2011.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**. Therefore, status as a small entity has been removed and any future fee(s) submitted must be paid at the large entity rate.

Additionally, the request is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Eifion Phillips appearing on the request shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. Therefore, since the address given in the present request differs from the correspondence address of record, a courtesy copy of this decision is being mailed to the address given in the request.

inquiriles related to this communication should be directed to the undersigned at (571) 272-3226.

Petitions Examiner
Office of Petitions

cc: Efion Phillips

Fish & Richardson, P.C. (BO)

P.O. Box 1022

Minneapolis, MN 55440-1022



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MCCARTER & ENGLISH, LLP NEWARK FOUR GATEWAY CENTER 100 MULBERRY STREET NEWARK, NJ 07102

MAILED

JUL 05 2011

**OFFICE OF PETITIONS** 

In re Patent No. 6,503,483

Issue Date: January 7, 2003

Application No. 09/818,807

Filed: March 27, 2001

Attorney Docket No. None

ON PETITION

This is a decision in response to a petition filed June 3, 2011, under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on January 8, 2011, for failure to pay the 7 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

A courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

Alicia Kelley-Collie Petitions Examiner Office of Petitions

cc: DAVID SHUCH

C.S. BIOSCIENCE, INC.

425 PARK AVENUE, NEW YORK, NEW YORK 10022



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BIRCH STEWART KOLASCH & BIRCH **PO BOX 747 FALLS CHURCH VA 22040-0747** 

MAILED

OCT 18-2011

OFFICE OF PETITIONS

In re Application of

Zhou et al.

Application No. 09/818863

Filing or 371(c) Date: 03/28/2001

Patent No. 6562968

Issue Date: 05/13/2003

Title of Invention:

METHOD OF PURIFYING

**TETRODOTOXIN** 

**ON PETITION** 

This is a notice regarding request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

A review of the petition reveals that the address appearing on the petition differs from the correspondence address of record. Applicant is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods Attorney Office of Petitions

CC:

PHILLIPS,EIFION FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022

DATE	11/30/10		•	Paper No.:
TO SPE OF	: ART UNIT	· .		·
SUBJECT	: Request for Certificate of Co.	rrection for Appl. No.: 0981	9079 Patent No.	64080474
Please resp	ond to this request for a	certificate of correction	within 7 days.	. 04080474
FOR IFW FI	LES:		aujo.	
	w the requested changes tion image. No new matt he claims be changed.	s/corrections as shown er should be introduce	in the <b>COCIN</b> do d, nor should the	cument(s) in the scope or
Please compusing docum	plete the response (see blent code <b>COCX</b> .	elow) and forward the	completed respor	ise to scanning
FOR PAPER	RFILES:			
Please review correction. F	w the requested changes Please complete this form	/corrections as shown (see below) and forwa	in the attached co	ertificate of
Certifi Rando Palm I	cates of Correction Bra Olph Square 9D40-D Location 7580	inch (C of C)	•	
Certifi Rando Palm I	oph Square 9D40-D	inch (C of C)	Lamonte :	
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Certifi Rando Palm I	oph Square 9D40-D Location 7580	inch (C of C)	Certificates of Correspondents	
Certific Rando Palm I	or Your Assistance	lentified correction(s	Certificates of Core 571-272-3421	
Certific Rando Palm I	or Your Assistance for issuing the above-ic	lentified correction(s	Certificates of Correspondents 571-272-3421 ) is hereby:	rection Branch
Certific Rando Palm I	or Your Assistance for issuing the above-ic on the appropriate box.  Approved	lentified correction(s  All changes a  Specify below	Certificates of Corresponding 1990.  State of Corresponding 1990.  State of Corresponding 1990.  Certificates of Corresponding 1990.  State of Corresponding	not apply.
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Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.usplo.gov

# FINNEGAN HENDERSON FARABOW GARRETT & DUNNER, LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413

MAILED

AUG 08 2011

OFFICE OF PETITIONS

In re Patent No. **7,305,473** 

Issue Date: December 4, 2007

Application No. 09/819,521

Filed: March 27, 2001

Attorney Docket No. 07738.0155-01

NOTICE UNDER 37 CFR 1.28(C)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **DISMISSED**.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record.

An unsigned paper or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where a petition (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other application.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that (person signing petition) was ever given a power of attorney to act on behalf of the inventor, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b)<sup>1</sup>, the petition can not be considered at this time.

<sup>&</sup>lt;sup>1</sup>37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3)

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

Mail Stop PETITION

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

By hand:

U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions

Randolph Building 401 Dulany Street Alexandria, VA 22314

By facsimile:

(571) 273-8300

Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7253.

/Monica A. Graves/ Petitions Examiner, Office of Petitions



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.usplo.gov

## FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON DC 20001-4413

MAILED

OCT 24 2011

OFFICE OF PETITIONS

In re Patent No. 7,305,473

Issue Date: December 04, 2007

Application No. 09/819,521

Filed: March 27, 2001

Attorney Docket No. 07738.0155-01

NOTICE UNDER 37 CFR 1.28(C)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page Petitions Examiner Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER 901 NEW YORK AVENUE, NW **WASHINGTON DC 20001-4413** 

MAILED FEB 28 2012

OFFICE OF PETITIONS

In re Patent No. 7,305,473

Issue Date: December 04, 2007

Application No. 09/819,521

Filed: March 27, 2001

Attorney Docket No. 07738.0155-01

NOTICE UNDER 37 CFR. 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page **Petitions Examiner** Office of Petitions



Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH VA 22040-0747 MAILED
OCT 07 2011
OFFICE OF PETITIONS

In re Patent No. 6,559,154

Issued: May 6, 2003

Application No. 09/819,796

Filed: March 29, 2001

Attorney Docket No. 3519-0108P

**ON PETITION** 

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 21, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby ACCEPTED.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. While, a courtesy copy of this decision is being mailed to the address given on the petition, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/ Joan Olszewski Petitions Examiner Office of Petitions

cc: EIFION PHILLIPS

FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022

EXPIRED PATENT (37 CFR 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7065051	2006-06-20	09819947	2001-03-27	P134US1
of the actual U.S. a 1.366(c) and (d).				the patent number and (2) the application number e(s) is/are associated with the correct patent. 37 CFR
SMALL ENTITY Patentee cla	ims, or has previously	claimed, small en	tity status. See 37 C	FR 1.27.
	EMENT TO SMALL EN no longer entitled to sm		See 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee	Code		Fee	Code
● 3½ year	(1551)		3 ½ year	(2551)
○ 7½ year	(1552)		7 ½ year	(2552)
○ 11 ½ year	r (1553)		11 ½ year	(2553)
SURCHARGE The surcharge req of the maintenance		i)(2) (Fee Code 1	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must b		his petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL		THE DELAY IN I	PAYMENT OF THE N	MAINTENANCE FEE TO THIS PATENT WAS
PETITIONER(S) F REINSTATED	REQUEST THAT THE I	DELAYED PAYMI	ENT OF THE MAINT	ENANCE FEE BE ACCEPTED AND THE PATENT
THIS PORTION M	IUST BE COMPLETED	BY THE SIGNAT	FORY OR SIGNATOR	RIES
	states: "Any petition und fice, or by the patentee			attorney or agent registered to practice before the Patent st."
I certify, in accorda	ance with 37 CFR 1.4(d	d)(4) that I am		
<ul><li>An attorney</li></ul>	or agent registered to	practice before the	e Patent and Tradem	ark Office
A sole pater	ntee			
	ntee; I certify that I am	authorized to sign	this submission on b	pehalf of all the other patentees.
A joint pater	ntee; all of whom are si	gning this e-petition	on	
○ The assigne	ee of record of the entir	e interest		

Approved for use through 03/31/2012. OMB 0651-0016 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-10-13	
Name	Kendal M. Sheets	Registration Number	47077	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

7065051

Issue Date:

June 20,2006

Application No. 09819947

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Filed:

March 27,2001

Attorney Docket No. P134US1

This is a decision on the electronic petition, filed

October 14,2010

,under 37 CFR 1.378(c)

to accept the unintentionally delayed payment of the year maintenance fee for the above-identified patent. 3.5

The petition is **GRANTED**.

October 14,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN				
EXPIRED PATENT (37 CFR 1.378(c))				
Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6452561	2002-09-17	09820268	2001-03-28	00CR046
CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).				
SMALL ENTITY  Patentee clai	ims, or has previously	claimed, small enti	ty status. See 37 C	FR 1.27.
	EMENT TO SMALL EN to longer entitled to sm		ee 37 CFR 1.27(g)	
NOT Small Entity			Small Entity	
Fee 3 ½ year	Code (1551)		Fee 3 ½ year	Code (2551)
● 7½ year	(1552)		○ 7½ year	(2552)
	(1553)		○ 11 ½ year	(2553)
SURCHARGE The surcharge requoting of the maintenance		)(2) (Fee Code 15	558) must be paid as	a condition of accepting unintentionally delayed payment
	EE (37 CFR 1.20(e)-(g aintenance fee must be		is petition.	
STATEMENT THE UNDERSIGN UNINTENTIONAL	THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS			
PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED				
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES				
37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."				
I certify, in accordance with 37 CFR 1.4(d)(4) that I am				
An attorney or agent registered to practice before the Patent and Trademark Office				
A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.				
A joint patentee; all of whom are signing this e-petition				
The assignee of record of the entire interest				

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner				
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature				
Signature	/Matthew J. Evans/	Date (YYYY-MM-DD)	2010-11-05	
Name	Matthew J. Evans	Registration Number	56530	

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.

## **Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

- 1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.
- A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
- 3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
- 4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
- 5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
- 6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
- 7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
- 8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.
- 9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.



**Commissioner for Patents** United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

In re Patent No.

6452561

Issue Date:

September 17,2002

Application No. 09820268

:DECISION GRANTING PETITION

:UNDER 37 CFR 1.378(c)

Filed:

March 28,2001

Attorney Docket No. 00CR046/KE

November 5,2010 This is a decision on the electronic petition, filed ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 7.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

November 5,2010 The maintenance fee is accepted, and the above-identified patent reinstated as of This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

# MAILED

SEP 1 4 2010

## OFFICE OF PETITIONS

: DECISION ON REQUEST FOR

: RECONSIDERATION OF

: PATENT TERM ADJUSTMENT

: and

: NOTICE OF INTENT TO ISSUE : CERTIFICATE OF CORRECTION

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In re Patent No. 7,660,721

Williams et al.

Issue Date: February 9, 2010

Application No. 09/820,292

Filed: March 27, 2001

Atty Docket No. PSTM0042/MRK

This is a decision on the petition filed on May 18, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and seventeen (1417) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and seventeen (1417) days is **GRANTED**.

This patent issued on February 9, 2010, with a patent term adjustment of 868 days. On March 24, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On April 21, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 1525 days.

The Office notes that the decision of April 21, 2010 was issued in error as it accorded Patentee 108 more days of patent term adjustment than were warranted, respectively. The present decision supersedes the decision mailed on April 21, 2010.

The Office has determined that the patent term adjustment for the above-identified patent is **1417 days**. The 108 additional days of adjustment will be removed.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and seventeen (1417) days.

The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) will be charged to Deposit Account No. 50-1574 in due course. No additional fees are required. The Office thanks Applicant for her good faith and candor in bringing this to the attention of the Office.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight

Director

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

## UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

**PATENT** 

: 7,660,721 B2

DATED

February 9, 2010

**DRAFT** 

INVENTOR(S): Williams et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 868 days

Delete the phrase "by 868 days" and insert - by 1417 days --